

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 23-90085-11
	§ HOUSTON, TEXAS
SORRENTO THERAPEUTICS, INC.,	§ MONDAY,
ET AL,	§ MARCH 11, 2024
	§
DEBTORS.	§ 9:02 A.M. TO 12:40 P.M.

MOTION TO TRANSFER OR DISMISS

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:	SEE NEXT PAGE
ELECTRONIC RECORDING OFFICER:	ZILDE COMPEAN

(Audio issues noted.)

TRANSCRIPTION SERVICE BY:

JUDICIAL TRANSCRIBERS OF TEXAS, LLC
935 Eldridge Road, #144
Sugar Land, TX 77478
281-277-5325
www.judicialtranscribers.com

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES:

US TRUSTEE:

OFFICE OF THE U.S. TRUSTEE
Aubrey Thomas, Esq.
Alicia Barcomb, Esq.
Kevin Efsay (phonetic), Esq.
515 Rusk, Ste. 3516
Houston, TX 77002
713-718-4661

FOR THE DEBTORS:

LATHAM & WATKINS LLP
Caroline Reckler, Esq.
Chris Harris, Esq.
Jonathan Gordon, Esq.
330 North Wabash Ave.
Ste. 2800
Chicago, IL 60611
312-993-9667

FOR THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS:

NORTON ROSE FULBRIGHT
Ryan Mann, Esq.
2200 Ross Avenue, Ste. 3600
Dallas, TX 75201
214-855-0000

MILBANK, LLP
Mark Shinderman, Esq.
2029 Century Park East
33rd Floor
Los Angeles, CA 90067
424-386-4000

(Please also see Electronic Appearances.)

INDEX

WITNESSES:	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>	<u>Redirect</u>
CHRISTY SIMMONS					
By Ms. Thomas	35	.	79	.	.
By Mr. Harris	.	66	.	.	.
MOSHIN MEGHJI					
By Ms. Thomas	82	.	139	.	.
By Ms. Reckler	.	106	.	.	.

EXHIBITS:	<u>Admitted</u>
ECF 2004-1, -17, -19, -20	34
ECF 2004-25, -27	148
ECF 2005-1 to -11	34
ECF 2004-22	57
ECF 2004-23	61
ECF 2004-24	63
ECF 2004-28	64
ECF 2005-12	149
Exhibits 12, 13 to 16	104
Exhibits 14, 15, 16	124
Exhibits 13 to 16	126

1 HOUSTON, TEXAS; MONDAY, MARCH 11, 2024; 9:02 A.M.

2 THE COURT: Good morning, everyone. This is Judge
3 Lopez. Today is March the 11th. I'll call the 9:00 a.m.
4 case, Sorrento, here in connection with the motion to transfer
5 or dismiss the case.

6 Just give me one moment, and we will get started.

7 A little over 100 people on the line, so I'm going
8 to enable the mute feature. I'd ask everyone to please if
9 you're going to just make an appearance that you just please
10 hit 5*. Go ahead and I will unmute your line if you know you
11 are going to be speaking today.

12 Otherwise, I'd just ask everyone please make an
13 electronic appearance. Don't forget just jump on the Southern
14 District of Texas website, and you can make an electronic
15 appearance there. Just find my home page. Find the link, and
16 you will find a place to make an appearance.

17 Why don't I start by taking appearances in the
18 courtroom?

19 MS. THOMAS: Thank you. Aubrey Thomas appearing on
20 behalf of the United States Trustee. I have my colleague
21 Alicia Barcomb here with me today, and U.S. Trustee Kevin
22 Efsay (phonetic).

23 THE COURT: Okay.

24 MS. THOMAS: Thank you.

25 THE COURT: Good morning. Good morning to all of

1 you. Good to see you.

2 MS. RECKLER: Good morning, Your Honor. Caroline
3 Reckler of Latham & Watkins on behalf of the Debtors. I'm
4 joined in the courtroom with my colleagues Mr. Harris and
5 Mr. Gordon, and on the video is our client, the Debtors' Chief
6 Restructuring Officer, Mr. Meghji.

7 THE COURT: Okay. Good morning.

8 MR. KANE: Good morning, Your Honor. John Kane of
9 Kane Russell Coleman Logan on behalf of Jackson Walker, LLP.

10 THE COURT: Good morning.

11 MR. MANNS: Good morning, Your Honor. Ryan Manns,
12 Norton Rose Fulbright, on behalf of the Official Committee of
13 Unsecured Creditors. And I'm joined remotely by Mark
14 Shinderman.

15 THE COURT: Okay. Good morning. I'm just going to
16 go in the order in which I see things here. There's a 607
17 number.

18 MS. LOVRIC: Good morning, Your Honor. Margaret
19 Lovric, Glenn Agre Bergman & Fuentes on behalf of the Official
20 Equity Committee.

21 THE COURT: Good morning.

22 There is an 832 number.

23 MR. CULBERSON: Good morning, Your Honor. Tim
24 Culberson, attorney pro se.

25 MR. CULBERSON: Good morning, Mr. Culberson.

1 There is a 213 number.

2 MR. SHINDERMAN: Good morning, Your Honor. Mark
3 Shinderman, Milbank on behalf of the Creditors Committee.

4 MR. CULBERSON: Okay. Good morning.

5 Give me one second here.

6 (Pause in the proceedings.)

7 THE COURT: I believe we have covered everyone on
8 the line. If I've unmuted your line, I'd ask that you please
9 just keep monitoring yourself so we can all hear each other.

10 Okay. I'll turn it over to the Trustee on the
11 motion.

12 MS. THOMAS: Thank you, Your Honor. I'd like to
13 just make a brief opening statement before we get into the
14 evidence.

15 THE COURT: Sure.

16 OPENING STATEMENT

17 BY MS. THOMAS: I know that the Court has reviewed
18 our motion, and my colleagues' responses, and the U.S.
19 Trustees' reply. I wanted to address for you the two
20 underlying concerns in regards to the motion to transfer venue
21 that you mentioned at the February 26th hearing, because I
22 think they are important.

23 The first is the requirement under Rule 1014 that a
24 motion to transfer venue timely. I would urge this Court to
25 find that the U.S. Trustee's motion was timely.

1 The Debtor and the Unsecured Creditors Committee
2 have not argued that the U.S. Trustee had actual knowledge of
3 the fact that the address listed on the petition was a Post
4 Office Box at a UPS Store, or that the signature bank account
5 was opened just days prior to the filing of this motion, and
6 there's good reason for this.

7 Because it was not clear from the petition, nor the
8 341 testimony, that those facts were in existence. My client
9 was not made aware of the facts surrounding venue until early
10 2024 and timely brought a motion thereafter.

11 Arguing that the U.S. Trustee should have known
12 improperly shifts the burden from the Debtors to make
13 accurate, forthright disclosures that is baked into the
14 Bankruptcy Code onto the Trustee to independently verify all
15 information in the Petition and Schedules.

16 We rely on a Debtors' forthright disclosures. The
17 Bankruptcy Code requires that both Debtors and counsel engage
18 in reasonable due diligence and adequately disclose all
19 information relevant to the case.

20 And we'd note in the consumer context, a Debtor can
21 lose their discharge for the failure to make adequate
22 disclosures, and the defense of "My lawyer told me it was
23 okay" is not acceptable.

24 This Court should not set a lower bar for corporate
25 debtors. Now counsel can certainly argue for an extension of

1 the law, and lawyers exist, I think, in part for our ability
2 to come up with novel solutions to tough problems.

3 But that's not what happened in this case. The
4 Debtor had an opportunity to disclose its novelty of point or
5 venue at the 341 Meeting, and chose not to do so. That isn't
6 arguing for an extension of the law. It equates to taking
7 cookies out of the jar without permission and hoping that you
8 don't get caught.

9 It was reasonable for the U.S. Trustee to rely on
10 the representations of the Debtors and their counsel in the
11 Petition and at the 341 Meeting, and to conclude that there
12 was nothing unusual about the venue selection in this case.

13 It is simply untenable to take the position that the
14 U.S. Trustee cannot trust simple disclosure such as the
15 appropriateness of the venue, and instead, must investigate
16 each answer to verify the truth or suss out a novel legal
17 argument.

18 The Bankruptcy Code has squarely put that obligation
19 to be transparent on the Debtor, and this Court should not
20 condone this kind of type of gamesmanship by Debtors.

21 And make no mistake, the evidence today will show
22 that this was not simple legal maneuvering; this was forum
23 shopping and improper gamesmanship of the bankruptcy system.

24 And I want to address this Court's second concern --
25 what happens to the Creditors? And the Court noted the

1 overwhelming support of the plan and the fact that this case
2 has been ongoing and contentious for over a year.

3 Certainly, the purpose of the bankruptcy system is
4 to provide relief to creditors and Debtors alike. So what is
5 the Court supposed to do with the tension between the obvious
6 lack of venue and concerns that transfer might harm the
7 creditors?

8 First, when venue is improper, there is no
9 discretion under the Code or the rules for this Court to
10 retain the case. There are two exclusive remedies --
11 dismissal or transfer to an appropriate venue.

12 The U.S. Trustee has not argued in favor of
13 dismissal. Instead, we've asked for a transfer to either
14 Delaware or California where a venue is clearly proper.

15 What the Court will hear today is there is no
16 evidence that transfer of venue will harm the Debtor or
17 Creditors in this case. It is fear mongering, plain and
18 simple.

19 THE COURT: Do you think me transferring a case like
20 this to the busiest District in America is fear mongering?
21 You think I created that? Right, Delaware's, like, the
22 busiest bankruptcy District in America. Do you think that's
23 fear mongering? I think my concerns were legitimate. It's
24 not fear mongering.

25 MS. THOMAS: And I apologize if I gave the

1 impression that it was the Court.

2 THE COURT: No, but you said they're my concerns.
3 So is it what you're saying that there's no evidence that's
4 going to be presented that sending something to the busiest
5 District in America, arguably the busiest District -- I don't
6 know; I don't keep in charge of rankings, but they're
7 certainly up there on anyone's list.

8 MS. THOMAS: They're certainly busy. I think --

9 THE COURT: So you --

10 MS. THOMAS: -- one of the busiest Districts. I
11 apologize.

12 THE COURT: Go ahead. No, I'm just saying. Go
13 ahead. In other words, it's an unfounded concern?

14 MS. THOMAS: I think it is unfounded, Your Honor. I
15 think that I was referring to the arguments made in the
16 Unsecured Creditors Committee response, and the Debtors
17 response to the motion.

18 THE COURT: I apologize. I thought you were talking
19 about my concerns. You said you were addressing two of my
20 concerns. I misunderstood.

21 MS. THOMAS: Sure. And I think your concerns were
22 borne out of the Debtors' and the Unsecured Creditors'
23 responses.

24 THE COURT: No.

25 MS. THOMAS: Okay. So that was my mis-impression.

1 THE COURT: No, no. They're just borne out of this.
2 All right. You have a large number of Creditors who voted,
3 right?

4 MS. THOMAS: Certainly.

5 THE COURT: When you send something on a case that's
6 so complicated with so many moving pieces to another District,
7 there are natural concerns that come along with that. And not
8 to say that my colleagues in Delaware or in California can't
9 do the job. That'd be silly of me to think that.

10 The question is you've got to think about, you know,
11 that's sending a lot. That's not sending a Chapter 13 case
12 where the Plan is confirmed and people are just paying on
13 their debts, right?

14 This is a lot of moving pieces in a case, lots of
15 moving pieces in a case, and I have to think about that, and
16 what's in the best interests, right, administration of
17 justice, right, you know, in the best interest of Creditors
18 and the best interest of administration.

19 It's you've got to think about that. It's not to
20 say that my colleagues -- of course, they could. Of course,
21 they're smart enough, and I'm not worried about any of that.
22 But the concept of fear mongering, I think, is a concept I
23 would push back on because I'm thinking about how long it took
24 for me to get up-to-speed on a case like this with a lot of
25 moving pieces.

1 And someone would have to do the same. And that's
2 not fear mongering. That's just knowing what it took me to do
3 it, and to send it somewhere else, and the realities of what
4 sending something to somewhere else, what that really means,
5 and what that entails.

6 MS. THOMAS: Absolutely. I think there are two
7 issues that are related on this. So first, there's the issue
8 of judicial economy, right, what you are speaking to towards
9 this is a large case, this is a complicated case.

10 I think the answer to that is what you've just said,
11 that we have capable judges in these other Districts that,
12 although I'm sure you're probably more painfully aware than
13 anywhere else the amount of work that it takes to get up-to-
14 speed on these types of cases is certainly what these judges
15 signed up to do.

16 You know, they took an oath to administer the cases
17 and sit on the cases that they've been assigned to. So I have
18 no concern about the judge being able to take on that case
19 and --

20 THE COURT: I'm not either. I'm just pushing back
21 on the concept --

22 MS. THOMAS: Sure.

23 THE COURT: -- of fear mongering were the words that
24 you used, and I'm pushing --

25 MS. THOMAS: Absolutely.

1 THE COURT: -- back on that.

2 MS. THOMAS: And absolutely. Let me address that
3 piece, because that's the second portion of it.

4 I think that in the response filed by the Debtor and
5 the Unsecured Creditors Committee, and during the depositions
6 that we're going to get into, there was discussions. There
7 was argument that somehow transfer of venue at this time was
8 going to negatively impact the sale or other aspects of the
9 administration of this case.

10 And the point I was getting to is that we don't have
11 any evidence that will show that there will be an impact on
12 the sale or administration of this case by virtue of simply
13 transferring the venue. So that's the piece that I think that
14 are related, but slightly different.

15 So I apologize for causing any confusion on that
16 piece.

17 THE COURT: No worries. I just wanted to make sure
18 we were on the same page.

19 MS. THOMAS: Absolutely. The evidence we're going
20 to present today will show that Dr. Ji, the sole director of
21 Scintilla, directed and approved all actions of Scintilla from
22 his headquarters in San Diego, California.

23 The decision to file in the Southern District of
24 Texas was as a result of counsel's advice, and counsel was
25 actually the party to facilitate the attempted manufacturing

1 of venue.

2 Dr. Ji's testimony transcript, which we're going to
3 go through with the Court just shortly, is 41 pages. And
4 during that short deposition, Dr. Ji could not answer the most
5 basic questions about the operative facts in this case,
6 answering "I don't recall" or "I don't remember" at least 35
7 times, and asserting that he had no separate factual knowledge
8 outside of attorney-client privilege more than ten times.

9 The evidence will further show that the Chief
10 Restructuring Officer had no involvement in establishing a
11 Houston Post Office Box at the UPS Store, establishing the
12 bank account prior to filing, and the choice of venue.

13 Thus, the evidence is going to demonstrate that the
14 actions at issue in this case were taken by Debtors' counsel,
15 and they were taken with the express purpose of attempting to
16 manufacture venue here in the Southern District of Texas.

17 In *Hertz*, the Supreme Court directed that, quote,
18 "If the record reveals attempts at manipulation, for example,
19 that the alleged nerve center is nothing more than a mail drop
20 box, a bare office with a computer, or the location of an
21 annual executive retreat, the Court should instead take as the
22 nerve center the place of actual direction, control, and
23 coordination in the absence of such manipulation."

24 The U.S. Trustee respectfully asks that the Court
25 find the venue is not proper here in the Southern District of

1 Texas and transfer this case to either Delaware or the
2 Southern District of California.

3 I'm happy to go through our exhibits that we'd like
4 to move for admission, but perhaps, other parties would like
5 to make an opening statement first.

6 THE COURT: Okay. I'll give them an opportunity
7 and --

8 MS. THOMAS: Thank you.

9 THE COURT: -- then we'll talk about exhibits.

10 Anyone who opposes -- oh, I should -- maybe I should
11 say, Mr. Culberson, I know you filed a motion in support of
12 the -- well, your own motion, I should say. Anything you wish
13 to say at this time, sir?

14 MR. CULBERSON: Thank you, Your Honor. First of
15 all, just for the Record, I was the first to file our motion
16 to transfer venue, the motion to dismiss.

17 THE COURT: That's correct.

18 OPENING STATEMENT

19 BY MR. CULBERSON: The U.S. Trustee has done an
20 amazing job taking the time and finishing the conclusive proof
21 that there never has been, never there is not, and there never
22 there will be venue in the Southern District of Texas.

23 And this type of venue manipulation should not be
24 awarded by giving these attorneys the opportunity to basically
25 transfer assets that -- and actually devalue the assets in

1 this case without -- and the evidence will show down the road,
2 maybe not today, but before our final attorney fee prove-up
3 hearing, that the value of these assets was not properly met
4 or marketed, and that it was done with at least negligence in
5 terms of the failure to market these assets for the sole
6 purpose that we are standing here today with the CEO of
7 Sorrento who was part of this manipulation that is now getting
8 the benefit of buying these assets for basically scrap value.

9 And this is an outrage. And any judge in any other
10 District who is allowed to preside over this case and do so
11 properly will find that as fact. And in the --

12 THE COURT: Mr. Culberson, Mr. Culberson --

13 MR. CULBERSON: -- interest of justice, I would
14 say --

15 THE COURT: -- Mr. Culberson, I hate to interrupt
16 you. Are you implying that I'm incapable of doing that?

17 MR. CULBERSON: Absolutely not, Your Honor. But my
18 point is the law doesn't allow you to do that in light of the
19 venue manipulation and the facts of this case, and I would say
20 that the law requires the dismissal or transfer of venue in
21 this case.

22 And I believe that is what the evidence shows, and
23 the manipulation that's been done in this case should not be
24 awarded. And so, I'm going to defer to the U.S. Trustee as
25 far as the remainder of the presentation of the evidence, as

1 they have done a tremendous job in presenting the evidence in
2 this case. And I thank you for your time.

3 THE COURT: Thank you. Mr. Culberson, I appreciate
4 the clarification. I'm going to keep your line open because
5 obviously, I'll give you an opportunity to provide any closing
6 comments as well because you are right. You are the first
7 person to have filed this motion. I'll give you an
8 opportunity to provide any closing argument.

9 MR. CULBERSON: Thank you, Your Honor.

10 THE COURT: Okay.

11 From parties opposing it, any opposing?

12 OPENING STATEMENT

13 BY MS. RECKLER: Good morning, Your Honor. Caroline
14 Reckler of Latham & Watkins on behalf of the Debtors. Your
15 Honor, I'd like to give some opening remarks to set the stage,
16 and the most of my argument will be at closing.

17 Even for the opening remarks, I think it might be
18 helpful in light of the United States Trustee's comments to
19 put some documents up on the screen recognizing they are not
20 yet in evidence.

21 Would Your Honor please give my colleague,
22 Mr. Gordon permission to share his screen?

23 (Pause in the proceedings.)

24 THE COURT: I think he has it, unless I've done
25 something wrong.

1 MR. GORDON: We're good.

2 THE COURT: Okay.

3 MS. RECKLER: Thank you, Your Honor. Your Honor,
4 I'd like to start by recognizing where we are and where we're
5 heading.

6 Your Honor approved the sale of the Debtors'
7 remaining assets on Friday, and as Mr. Meghji testified, we
8 expect that sale to close in about two to three weeks. There
9 is a part of the sale that you also heard about, and that was
10 raised by Mr. Glen, the NOLs.

11 And depending on if a transaction related to those
12 NOLs emerge, there may be further proceedings before the Court
13 with respect to both the sale and the Plan. So the timing is
14 a bit unclear, although directionally, we still do think it
15 will close in two to three weeks.

16 In light of that and after speaking to the Creditors
17 Committee this weekend, we repeated an offer to the United
18 States Trustee that we made prior to the hearing on the
19 interim DIP, and I think that was around February 26th.

20 And we said that if we would consent to a transfer
21 of venue if that transfer could occur after the key remaining
22 issues in this case were completed. And that was namely the
23 sale, consummation of the Plan, and a few other remaining
24 items, and Mr. Meghji will speak to what those are.

25 That is what is most important to our Creditors, and

1 we recognize they represent the fulcrum security in this case.

2 We also asked the Equity Committee what their
3 position was, and they simply told us they are monitoring the
4 situation.

5 The United States Trustee rejected the proposal.
6 They want the case transferred imminently, and we don't think
7 that is what is in the best interests of our economic
8 stakeholders, nor do we think that is legally required.

9 And I want to be very clear. We do not think that
10 venue should or needs to be transferred in this case for a
11 number of reasons.

12 Given the rejection of our offer, we feel as if we
13 have no choice but to proceed with the hearing. And Your
14 Honor, I want to start noting a few things, and that's there
15 are very few relevant facts in dispute in connection with the
16 motions to transfer or dismiss filed by Mr. Culberson or the
17 United States Trustee, and the key there are the relevant
18 facts.

19 The Movants don't dispute that at the time
20 Scintilla's position was filed, which is the relevant moment
21 in time for purposes of a venue analysis, Scintilla had rented
22 a small mailbox at a UPS Store in The Woodlands, and had
23 established a bank with a Signature Bank account that was
24 funded with \$60,000, and that Signature Bank told the Debtors
25 that account was affiliated with a Houston office, nor do they

1 dispute that prior to the establishment of those assets, that
2 Scintilla had no other operations or assets since 2019.

3 And for their part, the Debtors do not dispute that
4 Scintilla did not have these assets or contacts with the
5 Southern District of Texas until just days before the filing
6 of the bankruptcy case on February 13, 2023.

7 In fact, we even offered to stipulate to that with
8 the United States Trustee.

9 Mr. Gordon, can you pull up Exhibit 3, please?

10 And I don't normally speak to exhibits in opening
11 remarks, but I want to respond to something the United States
12 Trustee said in their opening remarks. And this is
13 Scintilla's Petition, and you can see in question 4, where it
14 says the Debtors' address, it says principal place of
15 business, 7 Switchbud Place, Suite 192-513, PO Box 513, The
16 Woodlands, Texas, 77300. That document was filed over a year
17 ago.

18 And Mr. Gordon, can you pull up Exhibit 13?

19 Again, I recognize this document is not yet in
20 evidence. This document will show that a year ago tomorrow on
21 March 13, 2023, the Debtors sent to the United States Trustee
22 a bank account statement showing that the bank opening balance
23 was zero dollars on February 10, 2023, and \$60,000 on
24 February 12, 2023.

25 There was nothing hidden, there was nothing the

1 Debtors lied about, and I find those statements offensive.
2 The only thing the Debtor didn't actively disclose was when
3 the PO box was opened. There has never been an effort to
4 disclose the existence of the PO box.

5 THE COURT: I understand what the Trustee's concern
6 is. Its concern about setting a precedent that it's now going
7 to be their burden in every case to prove whether something
8 is, you know, filed in the right District or not.

9 And when they want to bring these motions, that
10 someone's just going to, you know, hit them with a timeliness
11 objection because they -- and I think they're concerned about
12 the burden, the potential burden shift.

13 What response do you have to that?

14 MS. RECKLER: Your Honor, I think that's a fair
15 question, and you'll hear from Mr. Meghji that there were
16 several lengthy opportunities in which the Debtors and the
17 United States Trustee's Office engaged in conversations about
18 the Debtors' assets and liabilities.

19 And that started at the initial Debtor interview,
20 and it continued in a three-part, 341 Meeting that was
21 designed to facilitate a conversation between Debtor
22 representatives and the United States Trustee.

23 And a Creditor, the Debtors' largest creditor at
24 that time, Nant, showed up at the 341 Meeting last spring and
25 asked these very questions. The United States Trustee did not

1 follow up with the Debtors or ask anything further.

2 And the very questions -- and we will go through
3 this with Mr. Meghji in his testimony -- show a discussion
4 about the Debtors' principal place of business, where the
5 Debtors' assets resided, whether the Debtor was operating and
6 for how long, and also about the PO box and what occurred, if
7 anything, in that PO box.

8 It wasn't a secret. And it's a forum where the
9 United States Trustee has ample opportunity to examine a
10 Debtor representative under oath to suss out those questions.
11 I don't think there can be anything more clear about the
12 PO box than putting it on the face of the Petition. And Your
13 Honor, we'll get to this.

14 The Debtor didn't have to do that. The Debtor, the
15 UPS mailbox, we would've received mail in that mailbox had we
16 just used the 7 Switchbud -- I can't remember the rest of the
17 address. We didn't need to include a PO box. Had we wanted
18 to be manipulative or hidden that, we could've removed the
19 PO box. The mail would've been received all the same.

20 THE COURT: My concern as well -- well, I want you
21 to address two concerns raised by the U.S. Trustee upfront.
22 One is the concept of fear mongering in the papers that have
23 been, I think, the U.S. Trustee raised, whether you're trying
24 to create a situation where, you know, the fear of transfer
25 should weigh in my mind, and I want to know what you think

1 about that.

2 And two, I think the timing issue is something also
3 the U.S. Trustee is concerned about. So what is your response
4 to that? I'm sorry. I'm taking -- this is an important
5 hearing, so I might as well get all the cards on the table
6 early on, which is why I'm pushing everyone in a couple of
7 different directions.

8 MS. RECKLER: No, Your Honor. And thank you. I
9 appreciate the questions. I think speaking to your last
10 question first, this is about timeliness. It doesn't matter
11 if Your Honor thinks, as the U.S. Trustee believes, that 1406
12 applies, or if Your Honor thinks that 1412 and Rules 1014(b)
13 apply. It's all about being timely.

14 The cases are clear, the statute is clear, and so
15 are the rules. And Your Honor, going back to your prior
16 question about should it be the U.S. Trustee's burden,
17 frankly, the law is clear as well that any party challenging
18 venue has the burden to show by a preponderance of the
19 evidence that venue is improper.

20 And as to fear mongering, Your Honor, respectfully,
21 I think the inquiry is the interest of justice or the
22 convenience of the parties. I don't think it's about fear. I
23 think it's about evaluating the relative facts that are
24 available at the specific point in time that the Debtor makes
25 them available, which was on the Petition date and shortly

1 thereafter.

2 THE COURT: Okay.

3 MS. RECKLER: Your Honor, I just want to be clear
4 again because to varying extents, Mr. Culberson and the United
5 States Trustee's Office have alleged that the Debtors hid the
6 truth, perjured themselves, mislead the Court intentionally.
7 None of that is true. And frankly, I find those statements as
8 offensive as they are inaccurate.

9 And I look forward to this hearing because the
10 actual evidence -- and I know that evidence is important in
11 this Court -- will show that such allegations are without
12 merit as this Court has previously found.

13 I think the evidence will show that all of the
14 relevant facts were known or easily knowable months, if not a
15 year ago, and these motions are not timely. The fact is
16 dispositive under Rule 1014, which controls here, whether or
17 not Section 1406 of Title 28 applies as the U.S. Trustee
18 argues in the Debtors' dispute.

19 In all cases, an untimely motion is not a basis to
20 transfer. And as I said previously, the Movants have the
21 burden of proof here. And to prevail today, they have to
22 carry it on all three of the main items -- the first, that the
23 motions are timely; the second, that venue is improper; and
24 the third, that transfer is either in the interest of justice
25 or for the convenience of the parties.

1 The Movants can't carry their burden on any of these
2 issues, much less all three. And we'll address that through
3 evidence and at closing. Thank you, Your Honor.

4 THE COURT: Thank you.

5 Anyone else?

6 MR. SHINDERMAN: Yes, Your Honor. Mark Shinderman
7 for the Committee.

8 THE COURT: Yes, Mr. Shinderman.

9 OPENING STATEMENT

10 BY MR. SHINDERMAN: For opening, Your Honor, Mark
11 Shinderman of Milbank on behalf of the Creditors Committee.
12 Can you hear me okay, Your Honor?

13 THE COURT: Just fine.

14 MR. SHINDERMAN: Okay. Thank you, Your Honor.
15 Well, the Committee would prefer not to change venue for very
16 pragmatic reasons. The Court is familiar with the underlying
17 facts of this case. The Court approved confirmation of the
18 Plan. The Court approved the sale of assets. The Court knows
19 about potential litigation.

20 Judge Rodriguez is handling a very important aspect
21 of the case, looking at the case in other matters. And now
22 we'd have to proceed in two courts if we were to change venue.
23 And the parties didn't come back to you as you heard on
24 Friday, Your Honor, to amend the Plan, to address the NOL
25 issue.

1 We can figure out in the Equities Committee the best
2 way to exploit that asset. The problem is, Your Honor, we
3 don't want to waste money on appeal if the U.S. Trustee were
4 to lose this. It's not worth it. It's not worth spending the
5 precious few dollars that we have.

6 If they really want to change venue, if Your Honor
7 finds the venue is not proper, we don't feel it to be a
8 question of fear mongering. We're not fear mongering. We're
9 not worried about change of venue. A change in venue would
10 not alter the financial position which the estate finds
11 itself.

12 It wouldn't reverse any order of this Court. It
13 doesn't change our trajectory. But what it will do is cause
14 delay and impose costs as we get a new Court up-to-speed, and
15 then there's the issue regarding employment of local counsel
16 for now in two jurisdictions.

17 So it's a very pragmatic approach. Because of this
18 pragmatic approach, Your Honor, on three occasions, we offered
19 the U.S. Trustee to transfer venue essentially once the trust
20 was up and running, and the Plan was effective, going into a
21 different phase of the case.

22 Specifically, we offered on three occasions that we
23 would agree to transfer venue once the sale closed, once the
24 Court heard pending motions to extend the trading restriction
25 period, and once the Plan goes effective, which necessarily

1 involves perhaps adjusting NOLs before we go effective if the
2 Trustee wants to go forward and transfer venue now.

3 So it's our position that if you find venue is
4 inappropriate -- and that's a big if -- then it really comes
5 down a question of timing and when do we transfer venue, and
6 ought we transfer venue. It's not in the best interest,
7 economic interest of the parties.

8 And we notice that the U.S. Trustee hasn't said that
9 it is. And then we'd come back to the Judge Gerber (phonetic)
10 case that we mentioned to you a while ago that (inaudible)
11 case of how even if a transfer is mandatory, it can be delayed
12 in the interest of justice for the benefit of the parties.

13 But I want to be very clear what the evidence shows,
14 right. The evidence, the Petition very clearly indicated a
15 PO box, and the Committee at the very outset of this case was
16 very well aware of this issue and made inquiry to the Debtors'
17 counsel.

18 We knew all the issues, just like the U.S. Trustee
19 knew all the issues. As we put in our papers, the Committee
20 decided not to seek a transfer of venue at the time for
21 several reasons.

22 First, there is a DIP motion that had already been
23 approved by the parties. Second, the Court has already timely
24 appointed the Committee. They are well-versed on potential
25 litigation in this case, what the issues are, why our CRO is

1 necessary, and how the case ought to proceed.

2 Third, we have a very short runway, a very short
3 liquidity (inaudible) and we didn't want to waste time getting
4 a new Court up-to-speed, much like we don't want to waste time
5 getting a new Court up-to-speed now.

6 Fourth, there was a pending motion to remove a
7 Committee member, and any motion to transfer venue would have
8 looked like an attempt to shield that motion from the light of
9 day.

10 So we made a very conscious business decision, the
11 Creditors Committee, to proceed in this Court. This Court has
12 been available to us, is familiar with the facts, et cetera.
13 At the end of the day, if, and it's a big if, you found that
14 venue was improper in the first instance coming down to a
15 dispute or a conflict between Bankruptcy Rule 1014 and part of
16 the 28 U.S.C. Code, only the Fifth Circuit has ruled in an
17 attempt to reconcile those.

18 But in reconciling those essentially, the Fifth
19 Circuit read 1014 out of the Code including the bankruptcy
20 rules completely. There is no such precedent in the Fifth
21 Circuit. There is no guidepost in the Fifth Circuit.

22 Again, the Committee's position is very simple. If
23 -- if you find that venue is not appropriate, that's not the
24 end of the inquiry. There's a question about timeliness and
25 the interest of justice under 1014. And as we put it on

1 papers, we don't think either would be served.

2 But again to your question, we're not fear
3 mongering. If we have to move to another court, we are
4 suggesting we move to the District of Delaware, but -- but
5 only after those items I mentioned before are resolved.

6 To do anything else would impose costs on the
7 estate, would impose risk and harm. And that is not in the
8 best interest of justice.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Okay. Let's proceed with evidence. I think we were
12 going to talk about exhibits first.

13 MS. THOMAS: Thank you, Your Honor. Just two brief
14 points before I get into all of my exhibits. I want to make
15 clear the U.S. Trustee has not made any allegations of fraud
16 or misconduct at this point in time.

17 The Court does not have to find that any of the
18 professionals engaged in bad faith or any untoward conduct to
19 still find that transfer is appropriate under the statute. So
20 I just wanted to make that clear because I know that there
21 were some other allegations in Mr. Culberson's motion, and
22 those were not part of the U.S. Trustee's motion, so
23 clarification on that piece.

24 I can acknowledge that offers were made, as the
25 parties have said, in regards to a voluntary transfer of

1 venue. And the U.S. Trustee just simply cannot be complicit
2 in venue manipulation. And so, at this point, we're asking
3 that the Court transfer venue immediately.

4 So with those two points, I'm going to turn to our
5 evidence. Our exhibits are at ECF 2004-1 through 24. I did
6 have an opportunity to confirm --

7 THE COURT: Can you repeat the docket number? I was
8 just writing it down.

9 MS. THOMAS: I'm so sorry. 2004 --

10 THE COURT: Okay.

11 MS. THOMAS: -- 1 through 24. Sorry -- -28. My
12 apologies. 28.

13 THE COURT: 1 through 28?

14 MS. THOMAS: 1 through 28.

15 THE COURT: Okay.

16 MS. THOMAS: I did confer with Debtors' counsel, and
17 I believe that they have no objection to the admission of 1
18 through 17, as well as 19 and 20. The deposition transcripts
19 are Exhibits 25, 26, and 27. And they were generally
20 comfortable with the admission of those transcripts except
21 where they may have a particular objection about a particular
22 question.

23 Today, Dr. Ji and Drew Lockart of Stretto are
24 unavailable witnesses. So under Rule 32, we are submitting
25 their transcripts, their deposition transcripts as if it was

1 their testimony today. And we'll get to that piece. But I
2 want to just acknowledge that Debtors wanted to reserve their
3 objections on those pieces.

4 THE COURT: 1 through 17, 19, 20, 25, 26, 27, okay
5 except when there was an objection that you made in connection
6 with the deposition, for me to rule on the objection at the
7 time, or how do we --

8 MS. THOMAS: Did I get it right?

9 MR. HARRIS: Your Honor, Chris Harris of Latham for
10 the Debtors.

11 That is correct except for 26, which was
12 Mr. Meghji's deposition transcript. We were not agreeing to
13 that one because he's here in court.

14 THE COURT: Okay. So 25 and 27.

15 MR. HARRIS: Yes.

16 MS. THOMAS: Okay.

17 MR. HARRIS: But otherwise, that is all correct.

18 THE COURT: 1 through 17, 19, 20, 25, and 27 for the
19 aforementioned reasons.

20 MR. HARRIS: Yes.

21 THE COURT: Okay.

22 MS. THOMAS: And so, I think it's probably best to
23 simply address the objections to those exhibits as we get to
24 them through the presentation of evidence.

25 Also, the U.S. Trustee did not have an objection to

1 the admission of the Debtors exhibits. I believe it's at
2 ECF 2005-1 through 11. And 12 through 18, the U.S. Trustee,
3 those were just supplemented yesterday, and so the U.S.
4 Trustee would object primarily that they're simply untimely.

5 THE COURT: Okay. But you're okay with 1 through
6 11; did I get that right?

7 MS. THOMAS: Absolutely. 1 through 11, --

8 THE COURT: Okay.

9 MS. THOMAS: -- we have no objection to that.

10 THE COURT: Okay.

11 MR. HARRIS: I don't know, Your Honor, if I should
12 -- I'm sorry, Your Honor. Chris Harris of Latham & Watkins.
13 I don't know if I should address my exhibits now. U.S.
14 Trustee mentioned them, but I could wait until our case.

15 THE COURT: Why don't you come up to the mic just so
16 I can get a good record here.

17 2005, 1 through 11, okay. Everything else, no. Is
18 that?

19 MR. HARRIS: Yes. So the other documents are 12
20 through 18. My understanding is that the objection is that
21 they're not timely. My response is that they are, and I'll
22 explain what each of them are.

23 They are rebuttal exhibits in response to arguments
24 made in the reply brief that U.S. Trustee submitted which
25 challenges in particular that they were aware of the relevant

1 facts. And these documents go directly to that. In
2 particular, --

3 THE COURT: Mr. Harris, why don't we just -- I don't
4 want to pre-judge anything. Why don't we just proceed with 1
5 through 11. If you want to try to get the other ones in, you
6 can.

7 MR. HARRIS: Okay. Can I argue them when it's time
8 for our case-in-chief and explain why they're timely and
9 relevant?

10 THE COURT: Uh-huh.

11 MR. HARRIS: Thank you.

12 MS. THOMAS: I would like to call our first witness,
13 Ms. Simmons.

14 THE COURT: Okay.

15 Ms. Simmons, why don't you come on up?

16 MS. THOMAS: And Judge, it's just a matter of
17 housekeeping. Are those Exhibits 1 through 17 --

18 THE COURT: 19 --

19 MS. THOMAS: -- 19, 20 --

20 THE COURT: So I'll make it really clear.

21 MS. THOMAS: Thank you.

22 THE COURT: Docket 2004, 1-17, 19, 20, 25, and 27 --
23 wait. 2004, 1-17, 19, and 20 are admitted for all purposes.

24 25 and 27 are admitted, but there are some
25 objections within that depo transcript which the parties are

1 reserving their rights to -- with respect to, and 2005, 1-11,
2 are admitted.

3 (ECF 2004, 1-17, 19, 20, 25, and 27 received in
4 evidence.)

5 (ECF 2005, 1-11, received in evidence.)

6 THE COURT: Okay?

7 MS. THOMAS: Thank you, Your Honor.

8 THE COURT: What's Ms. Simmons' first name?

9 MS. THOMAS: Christy.

10 THE COURT: Christy. Ms. Christy Simmons, can you
11 raise your right hand, please.

12 (Witness sworn.)

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. I'll let the record reflect that
15 the witness has been properly sworn in. I'd just ask that you
16 please speak close to the mic. Make sure we can all hear you.
17 And if at any point, you hear objections, just give me an
18 opportunity to resolve that objection. And at some point, if
19 you need a break, just let me know.

20 Counsel, you may proceed.

21 MS. THOMAS: Thank you, Your Honor. Can you please
22 give Ms. Barcomb control of the exhibits?

23 THE COURT: Sure.

24 MS. THOMAS: Thank you.

25 THE COURT: Okay.

1 DIRECT EXAMINATION

2 BY MS. THOMAS:

3 Q Please state your name for the Record.

4 A Christy Simmons.

5 Q And what is your position with the Office of the United
6 States Trustee?

7 A I'm a bankruptcy auditor.

8 Q And which Region do you work in?

9 A Region 7.

10 Q Does Region 7 include the Houston Division?

11 A Yes, it does.

12 Q And as part of your employment, do you maintain files and
13 contracts for authorized depositories within Region 7?

14 A Yes, I do.

15 Q And in February 2023, were you similarly responsible for
16 that task?

17 A Yes, I was.

18 Q In February 2023, was Signature Bank an authorized
19 depository for Region 7?

20 A Yes, it was.

21 Q Do you have to have a bank branch in Region 7 in order to
22 be an authorized depository?

23 A No, you do not.

24 Q And why not?

25 A Debtors may have operations outside of the Region that

1 require a local bank, so they're more than welcome to be an
2 authorized depository in our Region.

3 MS. THOMAS: If we can please pull up exhibit, what
4 has been marked as Exhibit 18, 2004-18. And I understand that
5 this is one of the documents that they have an objection to.

6 MR. HARRIS: Your Honor, could we have argument
7 whether it's admissible before it's discussed in Court?

8 THE COURT: I don't even know if it's been
9 authenticated yet.

10 MR. HARRIS: It has not, and that's one of our
11 objections.

12 THE COURT: I'll let her ask the question, if she
13 can pull up --

14 MS. THOMAS: Right. I need to authenticate it
15 first. Absolutely.

16 THE COURT: So I'll overrule the objection.

17 MS. THOMAS: Okay. Sorry. She's having an issue
18 with technology. Hold on just a moment.

19 (Pause in proceedings.)

20 MS. THOMAS: For some reason, we are having
21 technical difficulties. I truly apologize, Your Honor.

22 THE COURT: No worries.

23 MS. THOMAS: We just need probably three minutes to
24 restart her computer.

25 THE COURT: Not a problem at all. I'll step off,

1 and then I'll come back on. Why don't we --

2 MS. LOVRIC: Your Honor, would it help for
3 Mr. Gordon to put them up?

4 THE COURT: No, I'm going to give it to them so they
5 can control their own presentation. So it's -- let's say, I
6 will call it 9:46. I'll come back at 9:50.

7 So, I will remind you that you're still under oath.
8 You can go back, you can come back on, but I'd just ask that
9 you speak with no one about --

10 MS. THOMAS: Well, --

11 THE COURT: Well, now I'll come back on. So we are
12 taking no breaks.

13 MS. THOMAS: All right. Thank you, Your Honor, for
14 the accommodation there. Okay.

15 BY MS. THOMAS:

16 Q Ms. Simmons, we have pulled up what the U.S. Trustee has
17 marked as Exhibit 18. Do you see the document in front of
18 you?

19 A Yes, I do.

20 Q And what is the title of this document?

21 A It's Signature Bank's SBA Trading and Sales 2018 slide
22 presentation.

23 MR. HARRIS: Objection, Your Honor. That is not the
24 title of the document, and I don't know --

25 THE COURT: Well, no. And also, the witness can

1 identify the document, but we don't read from a document
2 unless it's admitted into evidence. So I'm going to sustain
3 that objection. So she can authenticate the document. She
4 can't read from the document unless it's admitted into
5 evidence.

6 MS. THOMAS: Certainly. My apologies, Your Honor.

7 THE COURT: No worries.

8 BY MS. THOMAS:

9 Q Ms. Simmons, is this a -- can you tell me how you
10 obtained this document?

11 A I Googled Signature Bank SBA Trading, and this was the
12 document that I produced -- that was produced from that
13 search, from that Google search.

14 Q Okay. And if we -- I was going to ask if it was a true
15 and accurate copy of the document. If you can scroll through
16 the document and tell the Court if this is the document that
17 you pulled from the internet on a Google search.

18 A It is the document that I pulled.

19 MS. THOMAS: I would move to admit the document,
20 Your Honor.

21 MR. HARRIS: Objection, Your Honor. There has not
22 been a foundation laid as to what this document is.

23 THE COURT: I just want you to get closer.

24 MR. HARRIS: Sorry.

25 THE COURT: Just I want to make sure we have a clean

1 record.

2 MR. HARRIS: My initial objection is to
3 authenticity. There's been no record made about where this
4 document is from, who authored it, when it was created. On
5 its face, it reveals nothing at all about its source, where it
6 was stored. There's nothing to authenticate this. The fact
7 that someone did a Google search and a webpage came up is not
8 authentication.

9 There's not even a webpage on this document, and it
10 is also very clear on the Exhibit List that the Debtors filed
11 that this is not a Signature document. It's from a document
12 from a website CTAGGL.com.

13 THE COURT: I don't want to go -- if there's not
14 been proper authentication that this witness has -- clearly,
15 she's ran a Google search. But to admit a document off of
16 Google search into evidence for the truth of the matter
17 asserted is when there's been nothing on authentication, but
18 this document has not been -- or maybe her Google search has
19 been -- we know, that's all we know.

20 But this document has not been properly
21 authenticated. I'll sustain the objection.

22 MS. THOMAS: Moving on to Exhibit 19.

23 BY MS. THOMAS:

24 Q Ms. Simmons, can you please identify this document for
25 the Record?

1 A It's the annual, the 2022 annual report from Signature
2 Bank.

3 Q And have you reviewed this report?

4 A I have.

5 Q Does it identify any Signature Bank branch in Texas?

6 A It does not.

7 MR. HARRIS: Objection.

8 THE COURT: I'm going to sustain. The document has
9 not been moved into evidence, and so we can't testify about
10 where the document comes and without first properly admitting
11 it into evidence.

12 MS. THOMAS: Your Honor, this is one of the
13 stipulated --

14 THE COURT: Oh, this one was already stipulated to.

15 MS. THOMAS: Yes. It was stipulated to admission.

16 THE COURT: I apologize. And what's the objection?
17 She's read it. I'm wrong about that.

18 What's the objection?

19 MR. HARRIS: The objection is lack of foundation.
20 This witness didn't author this document. The document says
21 whatever it says, but she can't characterize what a
22 200-something page document says.

23 THE COURT: But she can testify to the best of her
24 knowledge. I'll allow it for that purpose. If she believes
25 it's not in there, if somebody can cross or point something to

1 it. I'll allow it. I'll overrule the objection.

2 BY MS. THOMAS:

3 Q Does this document identify any Signature Bank facility
4 in Texas?

5 A It does. On the last page, it lists all of the
6 facilities.

7 MS. THOMAS: If we can please scroll to that last
8 page?

9 BY MS. THOMAS:

10 Q And can you please read out loud from this document the
11 Texas facility that's identified there?

12 A It's 9 Greenway Plaza, 31st Floor, Houston, Texas, 77046.

13 Q Okay.

14 MS. THOMAS: And can we scroll up a little bit so we
15 can see -- well, I want to be able to show her what's --

16 THE WITNESS: Down at the bottom.

17 MS. THOMAS: Down a little bit further.

18 THE WITNESS: There's a footnote.

19 BY MS. THOMAS:

20 Q Okay, please. And how do you know that that location,
21 what that location is?

22 A There's three asterisks. And down at the bottom, the
23 three asterisks means that it's an SBA Institutional Trading
24 and Sales Representative Office.

25 Q Perfect. Let's move on to Exhibit 20, please.

1 THE COURT: Could you scroll up just a little bit?

2 MS. THOMAS: Sure.

3 THE COURT: I just wanted to see -- thank you.

4 Thank you.

5 MS. THOMAS: Thank you.

6 BY MS. THOMAS:

7 Q Ms. Simmons, can you please identify Exhibit 20 for the
8 Record?

9 A It's Signature Bank's Form 10K for 2022.

10 Q Thank you.

11 MS. THOMAS; And this is another exhibit that we've
12 stipulated to the admission.

13 BY MS. THOMAS:

14 Q Ms. Simmons, is this a true and accurate copy of the form
15 10K?

16 A Yes.

17 Q Have you reviewed this 10K report?

18 A Yes.

19 Q Does it identify any Signature Bank branch in Texas?

20 A No.

21 Q Does it identify any Signature Bank facility in Texas?

22 A Yes.

23 Q And let's --

24 MS. THOMAS: -- please scroll to page 7.

25 BY MS. THOMAS:

1 Q Can you tell us what that Signature Bank facility in
2 Texas is?

3 MR. HARRIS: Sorry. What page did you say?

4 MS. THOMAS: Page 7. It's 7 of the pdf. My
5 apologies. 6 on the bottom number, isn't it?

6 THE WITNESS: It's labeled page 6 on the document,
7 but it's page 7 of the pdf.

8 THE COURT: You have a well-prepared witness.

9 MS. THOMAS: We try, Your Honor.

10 Okay. Let's skip to the section that talks about
11 the locations.

12 All right. Okay, perfect. Thank you.

13 BY MS. THOMAS:

14 Q So my question that I got sidetracked because I was
15 having trouble reading the tiny print on my own, so can you --
16 does this document tell you what the Signature Bank facility
17 in Texas is?

18 A Yes. It states that additionally, through a
19 representative office in the -- of the bank in Houston, Texas,
20 we purchase, secure ties and sale of the guarantee portions of
21 U.S. Small Business Administration loans.

22 Q Thank you.

23 MS. THOMAS: Your Honor, as a matter of housekeeping
24 on Exhibit 6 and Exhibit 21, those were provided in unredacted
25 form with routing numbers listed. What we uploaded with the

1 Court was redacted just out of respect for that's how they
2 were originally placed by Debtors' counsel on the Record.

3 But for this next line of questioning, I think it
4 would be critical to her testimony to have the fully
5 unredacted exhibit in front of her and in front of you. So I
6 have copies, hard paper copies. May I approach the bench and
7 provide those copies?

8 THE COURT: Sure.

9 MR. HARRIS: We have no objection.

10 MS. THOMAS: Can I --

11 THE COURT: I can look at the hard copy from my
12 screen, the unredacted version, so I'm okay, Ms. Barcomb.
13 We're good. Thank you.

14 BY MS. THOMAS:

15 Q All right, Ms. Simmons, I've handed you what has been
16 admitted as Exhibit 6. Do you see this document?

17 A Yes, ma'am.

18 Q And can you identify it for the Record?

19 A It's the wire transfer instruction sheet.

20 Q And related to the Debtor Sorrento Therapeutics?

21 A Yes, ma'am.

22 Q Okay. And do you see an unredacted routing number listed
23 on this document?

24 A Yes, I do.

25 Q Okay.

1 MS. THOMAS: We're going to turn to Exhibit 21, and
2 I'm going to establish the authentication first because I know
3 that document has not been admitted yet.

4 BY MS. THOMAS:

5 Q Can you please look at the document that has been marked
6 as Exhibit 21?

7 A Yes.

8 Q Can you please -- well, let me ask you this: With the
9 routing number that was listed on Exhibit 6, were you able to
10 utilize a search engine to determine where that routing number
11 is located, like, where that routing number sends money?

12 A Yes.

13 Q And what search engine did you utilize?

14 A The American Banker Association look up.

15 Q Okay. And what does that ABA routing number look up do?

16 A It tells where that routing number, which branches it's
17 associated with or where those locations that that routing
18 number sends deposits or funds back and forth from.

19 Q And is this a database that is available to the public
20 from the American Bankers Association?

21 A Yes.

22 Q And the purpose is to verify routing numbers?

23 A Yes, it is.

24 MS. THOMAS: I would move to admit this as under
25 803-17. I appreciate that it's hearsay, but it is a database.

1 And I guess I'm getting ahead of myself. I can let you say
2 your objection, and I can probably respond to it.

3 THE COURT: Okay.

4 MR. HARRIS: The objection is hearsay.

5 MS. THOMAS: There we go. All right. So under
6 803-17, there is a public database exception. And *U.S. v.*
7 *Goudy* at 792 F.2d 664 (7th Cir. 1986), it allowed testimony
8 regarding bank routing numbers from a Polks Bank Director
9 Digest basically.

10 I would argue that this database provided by the
11 American Bankers Association is essentially the modern catalog
12 of routing numbers for you to access.

13 Under *U.S. v. Grossman*, 614 F.2d 295 at 297, the
14 First Circuit said that a catalog of a bank's products are
15 admissible.

16 And then we have out of the Eastern District,
17 actually, I think this one might be New York, *Conoco v.*
18 *Department of Energy* at 99 F.3d 387 at 393, the court
19 explained that under this exception comes databases that are
20 generally used by people in the industry and --

21 THE COURT: Where has that been established? What
22 testimony do I have that this has been generally relied upon
23 by the public or by people in the industry? I don't think
24 you've established that, so I will overrule your objection.
25 Maybe you can provide some more foundation.

1 I know she looked it up and she thinks that, but I
2 don't have any evidence that the American -- I don't -- I'm
3 not saying -- I'm not familiar with the American Bankers
4 Association. That may not mean anything, but I do think you
5 have to establish that it's generally relied upon by market
6 participants.

7 I think you're telling me you went to -- I think
8 there's a difference between this, for example, and telling me
9 that someone used, you know, looked up stock prices on, you
10 know, Yahoo Finance or something of that nature.

11 I think market compilations, I think there could be
12 an exception, but I just don't think you've provided enough
13 foundation to get over -- to get with 317, but I'll let you
14 get there if she can answer.

15 MS. THOMAS: I'm going to try.

16 BY MS. THOMAS:

17 Q Okay. Ms. Simmons, in the course of your employment as
18 an auditor, do you have occasion to need to look up or verify
19 routing numbers?

20 A Yes, I do when the banks are applying for to be an
21 authorized depository within our Region. They have to provide
22 their ABA numbers, and that's what they use to then pledge
23 collateral for those accounts or within a DIP account or a
24 bankruptcy estate account that were held within that bank.

25 Q So when you say their ABA numbers, are you referring to

1 the American Bankers Association?

2 A It's the routing numbers, yes.

3 Q Okay. So when you are doing your work as an auditor,
4 banks provide you routing numbers?

5 A Yes.

6 Q And those routing numbers are -- are those gathered under
7 the American Bankers Association? Is that your understanding?

8 A I don't know.

9 Q Okay. If you needed to look up a routing number for
10 verifying an authorized depository, where would you go?

11 A To the bank. It's where I -- the bank itself gives me
12 the ABA number.

13 Q Could you independently verify that ABA number?

14 A I haven't had occasion to do that.

15 Q Okay. In your course of preparing for today, did you
16 have a chance to go through the database for the American
17 Bankers Association?

18 A I did. I used that to look up the ABA number that was
19 provided to me to see what branches or banks for that
20 particular bank was assigned that ABA number. Banks can have
21 up to five different ABA numbers. And this number, this gives
22 a list of the banks or the branches for that -- for Signature
23 Bank that was assigned this particular ABA number.

24 Q You seem to be using ABA number and routing number
25 interchangeably. Can you explain that a little bit?

1 A On the banks, because my responsibilities are more on the
2 banking aspect of it, as opposed to particular accounts for
3 the Debtors, I work with the banks making sure they have
4 collateralized, enough collateralized to pledge so that they
5 cover all of the accounts within our Region.

6 And it's based on their pledging for those ABA or
7 accounts. It goes off of the ABA numbers that the bank has,
8 and that's what this -- to protect accounts that are assigned
9 under that ABA or routing number.

10 Q Okay. So ABA number and routing number are synonymous?

11 A Correct.

12 Q And ABA stands for American Bankers Association.

13 A Yes.

14 Q And so, did you have occasion to verify a routing number
15 using the ABA's database?

16 A Yes.

17 MS. THOMAS: I would again move to admit Exhibit 21
18 before I get too far.

19 THE COURT: Okay.

20 MR. HARRIS: Objection, Your Honor. The --

21 THE COURT: I'm sorry. One of their mics should get
22 you what you're looking for.

23 MR. HARRIS: Let me come up here.

24 THE COURT: You can come up here. I just want to
25 make sure that we have a clean Record.

1 MR. HARRIS: I don't believe that the foundation for
2 a market compilation has been met. The test is whether it's
3 generally used by the public or generally used by
4 participants.

5 The only evidence for foundation is that this
6 particular person has used them, and we don't even know on
7 what occasions. There's no evidence this is a generally-used
8 database or foundation.

9 THE COURT: I agree. The only testimony I've heard,
10 and maybe I'm wrong about this, is that she looked at it in
11 connection with this litigation. Because she says she
12 normally goes to the bank to get the routing number. So I
13 don't think you've established the proper foundation for this
14 document.

15 I'm also a little -- I'll just leave it there. I
16 can't even tell what the search was by looking at this
17 document. We don't even get there because I don't think
18 you've established a proper foundation.

19 I think the witness was honest. She had occasion to
20 look at this in connection with this hearing. She normally
21 calls the bank when she wants to get an ABA number. So, I
22 mean, I'll let you keep trying. But as of right now, it's not
23 in.

24 MS. THOMAS: I would also argue, Your Honor, that it
25 is a public record under 803.8. And --

1 THE COURT: I don't know if the public can use this.
2 Nobody's established any foundation that the public can
3 actually use this.

4 MR. HARRIS: I would also, Your Honor, object. That
5 is limited to reports of a public office. The American
6 Bankers Association is not a governmental entity.

7 MS. THOMAS: All right. We can pull down Exhibit 21
8 and just put up Exhibit 6, the redaction version, Ms. Barcomb.
9 BY MS. THOMAS:

10 Q Ms. Simmons, you have the unredacted version of Exhibit 6
11 in front of you, correct?

12 A Yes, I do.

13 Q And do you see the routing number that is listed on this
14 document?

15 A Yes, I do.

16 Q Did you have occasion to research this routing number?

17 A Yes, I did.

18 Q And I think you've already testified routing numbers --
19 well, let's do this again.

20 What does a routing number tell you?

21 A The -- which bank and which Region of -- well, maybe not
22 Region, but which bank is assigned that routing number.

23 Q So if someone were to utilize a routing number to wire
24 funds as this document instructs, that would tell you which
25 bank it's going to?

1 A Yes.

2 Q Did you search this number that's listed on Exhibit 6?

3 A Yes.

4 Q Does this routing number send funds to a bank in Texas?

5 MR. HARRIS: Objection, Your Honor. My objection is
6 either that the witness is being asked to elicit hearsay
7 testimony based on the document that was found inadmissible,
8 or that the witness is being attempted to be used by expert
9 testimony.

10 The witness has no personal knowledge about this
11 routing number or the account. That's been established. All
12 she's done is apparently as an auditor taken steps to find
13 things. If she was going to be designated as an expert
14 witness, certainly, an expert could do that. But she was not
15 designated as an expert witness on the Witness and Exhibit
16 List.

17 So she has no personal knowledge about what this
18 account is associated with, what this ABA number is associated
19 with.

20 THE COURT: I'll overrule. I don't think this is
21 requiring expert. She's an auditor for the U.S. Trustee, and
22 I'll let you cross on it to determine -- I'll let her answer.
23 But, I mean, I don't -- she can provide the answer, and we'll
24 see where it goes.

25 MS. THOMAS: I will ask the question again.

1 MS. THOMAS:

2 Q When you searched this routing number, did it send the
3 funds to a bank located in Texas?

4 A Not that I saw.

5 Q Do you happen to recall any of the locations that were
6 associated with this routing number?

7 A They were in New York, California, Connecticut, Nevada,
8 and North Carolina, I believe.

9 Q Okay.

10 MS. THOMAS: Moving on to Exhibit 22, please.

11 This is another document that was not stipulated to
12 admission, so I will work on admissibility first and then
13 authenticating.

14 MS. THOMAS:

15 Q Ms. Simmons, can you please identify the document that is
16 marked as Exhibit 22 for the Record?

17 A It is a printout of the acquisition of Signature Bank
18 from Flagstar.

19 Q Okay. And is this a printout of a document generated on
20 the internet by the FDIC?

21 A Yes, I pulled it from the FDIC website utilizing the data
22 tool, and then searched Signature Bank and the history.

23 Q Does this appear to be a true and accurate copy of the
24 document that you pulled when you used that search function on
25 the FDIC website?

1 A Yes, it is.

2 MS. THOMAS: I'd move to admit.

3 THE COURT: Okay. Counsel?

4 MR. HARRIS: Objection, Your Honor. Two objections.
5 One is authenticity. I don't think it's clear where on the
6 website this document is from. Apparently, it's from an FDIC
7 website, but without indicating what the web address is.
8 There is a web address in the Exhibit List which does not link
9 to this page. So my objection is authenticity, and the second
10 is hearsay.

11 THE COURT: All right. I'll sustain the
12 authenticity of the document. I don't have any evidence right
13 now that this came from a website. I know that the witness is
14 testifying to that. But whether this came from an FDIC, I
15 certainly can't tell from the face of the document where this
16 came from.

17 And so I think -- I've got -- it says contact the
18 FDIC, but that doesn't tell me that this was from the actual
19 search that she ran. I need a little bit more foundation to
20 determine whether this was actually from an FDIC website. I
21 just can't tell from the face of it, so I'll sustain the
22 authenticity objection.

23 MS. THOMAS: All right. I'm going to --

24 THE COURT: The authentication objection.

25 MS. THOMAS: I'm going to attempt to get a little

1 bit more.

2 BY MS. THOMAS:

3 Q Ms. Simmons, did you visit in preparation for today's
4 testimony the FDIC Federal Government official website?

5 A Yes, I did.

6 Q And on that website, were you able to locate a tool that
7 allows you to search for official FDIC documents?

8 A Yes, under resources, there's a data tool option which I
9 selected. And then once I was in there, I clicked, I searched
10 Signature Bank, and clicked on the second option. And that
11 took me to -- and clicked history, and then it brought up this
12 particular document.

13 MS. THOMAS: And I'm going to have you scroll
14 through the whole document, please, Ms. Barcomb.

15 BY MS. THOMAS:

16 Q Ms. Simmons, please take a very careful look at this
17 document. Is this the webpage that appeared on the FDIC's
18 website when you selected the information for Flagstar's --
19 I'm trying to be careful that I don't get into the document.

20 Let me say it this way: When you selected a document on
21 that data tool, on the FDIC's website, is this a true and
22 accurate copy of the document that comes up on that Federal
23 Government webpage?

24 A Yes, it is.

25 MS. THOMAS: Move to admit, Your Honor.

1 THE COURT: Okay.

2 MR. HARRIS: Your Honor, I'll withdraw my
3 authenticity objection. I understand what was done, but I
4 continue to object on hearsay grounds.

5 MS. THOMAS: And I would respond that it is a public
6 record, and it is a public database run by the FDIC.

7 THE COURT: For what purpose is it being offered?

8 MS. THOMAS: We are using it to establish our next
9 document, which is --

10 THE COURT: Oh, okay.

11 MS. THOMAS: -- Exhibit 23. So we want to show the
12 Court where we've gone to show some -- where branches are
13 located for Signature Bank.

14 MR. HARRIS: Can I respond on the public records,
15 please?

16 THE COURT: Sure. Of course.

17 MR. HARRIS: Well, I guess also on the database.
18 I'll go to the database first. There is no foundation laid
19 that anyone in the public uses this database. So it does not
20 satisfy subpart (17).

21 In terms of a government record, a government record
22 is limited to a record or statement of the government agency
23 sets out the office's activities. That is not what this
24 appears to be. It doesn't list any activity. There may be
25 some information, but it doesn't list any activity by the

1 FDIC. It doesn't fit within that.

2 MS. THOMAS: And I would say if you look at the
3 center of the document, it says action taken, FDIC certificate
4 number. That absolutely shows what the action that the
5 government took. I'm trying not to get into the nature of the
6 document to make sure that I'm not going too far.

7 And I'm happy to ask Ms. Simmons if this is a
8 database that the public has access to, if that will address
9 counsel's concerns.

10 THE COURT: I think both of you are arguing two
11 different rules. I think he was arguing under 803.7 -- 803.8,
12 right, that this public record doesn't set out the office's
13 activities.

14 MR. HARRIS: Yes, Your Honor.

15 THE COURT: I think that's where he was going.

16 MS. THOMAS: Well, and I was responding that it
17 absolutely does, Your Honor. If we can get into the content
18 of the document, it has a certificate number and action taken.
19 The outgoing institution, the acquiring institution, the
20 surviving institution.

21 THE COURT: I'm going to overrule the objection.
22 I'll allow this document.

23 (Exhibit 2004-22 received in evidence.)

24 BY MS. THOMAS:

25 Q Ms. Simmons, can you generally describe what this

1 document is telling us?

2 A When Flexstar acquired --

3 MR. HARRIS: Objection.

4 THE WITNESS: -- Signature --

5 THE COURT: Yeah.

6 MR. HARRIS: Objection, Your Honor. This document
7 is in evidence, but this witness has no personal knowledge
8 about the situation. She should not be allowed to describe
9 and characterize a document that she has no personal knowledge
10 of.

11 THE COURT: Well, the document will speak for
12 itself, Counsel. In other words, if she has personal
13 knowledge about something in here, but if she's just pulling
14 it --

15 MS. THOMAS: Certainly.

16 THE COURT: -- then I think the document will speak
17 for itself.

18 MS. THOMAS: Absolutely. Just trying to give some
19 context. Happy to move on.

20 If we can scroll down, please, to the middle of the
21 page?

22 BY MS. THOMAS:

23 Q There's a button, do you see, Ms. Simmons, that says view
24 branches?

25 A Yes, I do.

1 Q Did you click on that link?

2 A I did.

3 Q Okay.

4 MS. THOMAS: Let's click Exhibit 23.

5 BY MS. THOMAS:

6 Q Now when you clicked that button to see view branches, is
7 this the document that came up on your computer screen? And
8 we can scroll through so you can see it.

9 A Yes, it was.

10 MS. THOMAS: I'd move to admit this document as
11 well.

12 THE COURT: I understand there will be a similar
13 objection. I just have -- and I'll admit it -- I have one
14 question. Is there a way to tell what existed in January of
15 2023? Did you ever run a search like that? In other words,
16 maybe, like, is there a way to tell whether this has been
17 updated or changed since January of 2023?

18 THE WITNESS: This was March of 2023.

19 THE COURT: When you ran this search?

20 THE WITNESS: No. It's the date, the historical
21 date on -- when I did the historical data from the previous,
22 when I first was in Signature Bank.

23 THE COURT: Okay. Got it.

24 THE WITNESS: And then I clicked on historical. And
25 so, this was the document that came up.

1 THE COURT: But can you tell whether the -- do you
2 have personal knowledge whether when you see view branches,
3 whether that relates to that time period? Do you have
4 personal knowledge of that?

5 THE WITNESS: This is the list.

6 THE COURT: I'm asking do you have personal
7 knowledge of what that means.

8 THE WITNESS: I understand what it means. I don't
9 know what --

10 MS. THOMAS: Your Honor, I don't mean to interrupt.
11 If I could ask a couple questions, I think I can get to where
12 you're going.

13 THE COURT: She can answer my question. Then you
14 can ask her any follow-up questions.

15 MS. THOMAS: Sure.

16 THE COURT: I'm just asking.

17 THE WITNESS: The -- it was what Flagstar acquired
18 from when they took over Signature --

19 THE COURT: In March of 2023. And then you click on
20 that link and got it.

21 THE WITNESS: And you click there, there's --

22 THE COURT: Okay.

23 THE WITNESS: -- branches.

24 THE COURT: Thank you.

25 BY MS. THOMAS:

1 Q Perfect. You answered the question. Okay.

2 MS. THOMAS: I just wanted to clarify that we're
3 admitting 23?

4 THE COURT: Yes.

5 MS. THOMAS: Thank you, Your Honor.

6 (ECF 2004-23 received in evidence.)

7 BY MS. THOMAS:

8 Q Okay. Does this document identify the 40 branches --
9 well, let me back up.

10 Do you have personal knowledge of when Signature Bank
11 failed?

12 A Yes.

13 Q And when about was that?

14 A It was early 2023 in February, I believe.

15 Q Okay. And who took over Signature Bank's branches?

16 A Flagstar.

17 Q Okay. So when this says Flagstar at the top, this is
18 telling us the Signature Bank branches that it took over in
19 March of 2023, right?

20 A Yes, it does.

21 Q Okay. Does this identify any branch in Texas?

22 A No, it does not.

23 Q Okay.

24 MS. THOMAS: Let's move on to Exhibit 24, please.

25 And again, this is not one of the documents that

1 we've stipulated to admission, so I will start with
2 authenticity.

3 BY MS. THOMAS:

4 Q Ms. Simmons, can you please identify this document for
5 the Record?

6 A It is the FDIC supervision of Signature Bank press
7 release from April 28, 2023.

8 Q And how did you obtain this document?

9 A Through the FDIC website.

10 Q Can you give a little bit more detail how you went
11 through to get this document?

12 A On the FDIC website, I searched Signature Bank, and this
13 was, I think, the third option that popped up.

14 Q Was this the same database that you found Exhibit 22?

15 A Yes, it was.

16 Q Okay. Is this a true and accurate copy of the document
17 that you pulled from the FDIC's website after engaging in a
18 search on their government database?

19 A Yes.

20 MS. THOMAS: We can scroll through.

21 THE COURT: Yeah, I was going to ask if -- I don't
22 want her answering questions without having the opportunity to
23 flip through.

24 MS. THOMAS: Yeah. Let's flip through.

25 THE WITNESS: Yes, it is.

1 MS. THOMAS: Okay. Thank you.

2 I'd move to admit this document.

3 MR. HARRIS: No objection.

4 THE COURT: Okay. It's admitted. This was 24,
5 right?

6 MS. THOMAS: Yes. Yes.

7 THE COURT: Okay.

8 (ECF 2004-24 received in evidence.)

9 MS. THOMAS: Thank you, Your Honor.

10 THE COURT: Okay.

11 BY MS. THOMAS:

12 Q Does this document by the FDIC identify any Signature
13 Bank branches in Texas?

14 A It does not.

15 Q Does it list anywhere in this document where Signature
16 Bank's branches were located?

17 A I believe so.

18 MS. THOMAS: We can scroll to pages 6 and 7, it
19 would be helpful.

20 I think it's the next page, please. Thank you.

21 Okay. Yes, if we could go to that paragraph with
22 background, please.

23 BY MS. THOMAS:

24 Q All right. Ms. Simmons, from this document, do you see
25 that there are 40 branches for Signature Bank?

1 A Yes, I do.

2 Q And where are they located?

3 A The New York Metropolitan area, Connecticut, California,
4 North Carolina, and Nevada.

5 Q Okay.

6 MS. THOMAS: I'm going to skip on to Exhibit 28.

7 And I believe we've stipulated to admission of 28,
8 correct?

9 THE COURT: I don't have 28 on my -- no, I don't
10 have 28.

11 MS. THOMAS: I just don't recall. I apologize.

12 MR. HARRIS: I have no objection to 28.

13 MS. THOMAS: Okay.

14 THE COURT: Okay. Let's just admit 28 then.

15 (ECF 2004-28 received in evidence.)

16 BY MS. THOMAS:

17 Q All right. Ms. Simmons, can you identify this document
18 for the Record?

19 A It's the annual report for 2021 for Signature Bank.

20 Q And have you reviewed this document?

21 A I have.

22 MS. THOMAS: And if we can scroll through, please?

23 BY MS. THOMAS:

24 Q Does this appear to be a true and accurate copy of the
25 2021 Annual Report?

1 A It does.

2 Q And does this document identify any Signature Bank branch
3 in Texas?

4 A It does not.

5 Q And does it identify any Signature Bank branch or
6 facility? Let me say it again so we have a clean Record.

7 Does it identify any Signature Bank facility in Texas?

8 A Yes, it does.

9 MS. THOMAS: Now let's go to the last page, please.

10 BY MS. THOMAS:

11 Q And if you can just identify for the Record, what is the
12 Texas facility that is identified in this document?

13 A It's the 9 Greenway Plaza, Suite 3120, Houston, Texas,
14 77046. Again, it's the --

15 MS. THOMAS: I see those three asterisks at the
16 bottom. So if we can scroll all the way to the bottom?

17 BY MS. THOMAS:

18 Q What do those three asterisks tell you?

19 A It's the SBA Institutional Trading and Sales and
20 Representative Office.

21 Q Okay.

22 MS. THOMAS: I think I'm done.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 Can we just take a five-minute break? I'm just

1 going to -- do you want to take a moment and just come back in
2 about five minutes, and we'll begin with cross-examination.

3 Thank you.

4 (Recess taken from 10:25 a.m. to 10:35 a.m.)

5 THE COURT: We are back on the Record in Sorrento.

6 Mr. Harris, are you conducting the Cross?

7 MR. HARRIS: Yes, Your Honor.

8 THE COURT: Okay. Anything you need to give
9 Mr. Gordon?

10 MR. HARRIS: Yes, I did.

11 THE COURT: Okay, you got it.

12 And, Ms. Simmons, I remind you that you are still
13 under oath.

14 Okay, you may proceed.

15 CROSS-EXAMINATION

16 BY MR. HARRIS:

17 Q Good morning, Ms. Simmons. We didn't meet before, we
18 didn't have a deposition, but my name is Chris Harris. I'm
19 one of the attorneys representing the Debtor.

20 And, Ms. Simmons, you've never worked for Signature Bank;
21 right?

22 A No, I have not.

23 Q So you weren't involved in establishing Signature Bank's
24 policies regarding checking accounts, for instance; correct?

25 A No, I have not.

1 Q Or its policies regarding wiring instructions; correct?

2 A Correct.

3 Q Or its policies regarding what activities can be
4 conducted in offices in hosted branches; right?

5 A Correct.

6 Q You have no personal knowledge of any of those topics;
7 right?

8 A No.

9 Q And do you know, as the auditor for the United States
10 Trustee, that the United States Trustee considered the
11 appropriateness of venue of the initiations of these
12 Chapter 11's?

13 MS. THOMAS: Objection. (Indiscernible).

14 THE COURT: What's your response, Counsel? Can you
15 ask the question again?

16 MR. HARRIS: Yes. I asked whether the witness
17 knows, in her role as the auditor for the United States
18 Trustee, whether the U.S. Trustee considered the
19 appropriateness of any of the initiations of each Chapter 11
20 case.

21 THE COURT: Overruled. You may -- the witness was
22 asked about the processes that the United States Trustee does.
23 I think this is -- we're here on a motion to transfer based on
24 venue. You opened the door by asking questions about the U.S.
25 Trustee processes and what they do in connection with finding

1 out what's going on with the bank exhibits, and that opened
2 the door to where we are, so I'll overrule your objection.

3 THE WITNESS: I am not involved in most -- in this
4 case at all, so I -- it was just the banking aspect a couple
5 -- a week and a half ago that they were -- that I was asked to
6 search Signature Bank. So I have no knowledge of the case
7 specifically.

8 BY MR. HARRIS:

9 Q I understand you had no role on this matter until a few
10 weeks ago. That's what you just explained; right?

11 A Yes.

12 Q My question was different, which is that, does the United
13 States Trustee consider the appropriateness of venue as a
14 general matter at the initiation of each Chapter 11.

15 MS. THOMAS: Objection.

16 THE COURT: Now, I'm going to sustain the objection,
17 only because the witness has just testified, at least that she
18 has no knowledge about anything about this case until about a
19 week and a half ago, and that testimony will stand.

20 If she -- if you want to ask her about her job
21 generally, I think that's fair. She's testifying as an
22 auditor for the United States Trustee's Office, and I'll
23 sustain the objection. I'm not sure she knows the answer to
24 that question based upon the testimony that I heard.

25 I'll sustain the objection.

1 MS. THOMAS: And, Your Honor, just for a clear
2 Record, I want to make sure that Ms. Simmons is not being
3 asked to disclose anything that is work product in terms of
4 what she's talking about with attorneys or the U.S. Trustee.

5 THE COURT: She's only been on the case for a week
6 and a half so, you know.

7 MR. HARRIS: Let me ask a different question.

8 THE COURT: And I think it's -- I think it's fair.
9 I don't -- I'm not asking -- I don't think you've been asked
10 to disclose anything in connection with attorneys. To the
11 extent you have, I'm going to give your counsel an opportunity
12 to raise an objection, okay?

13 BY MR. HARRIS:

14 Q On other Chapter 11 matters, have you conducted
15 investigations regarding venue facts, like initiation of
16 Chapter 11s.

17 MS. THOMAS: Objection. This exceeds the scope and
18 it also goes into our work product. What she's doing is
19 working on legal matters for a client, the United States
20 Trustee, and that comes -- all of it is under supervision of
21 the trial attorney.

22 THE COURT: Well, I'll sustain the objection, but at
23 the closing I'm going to need to understand -- well, I'll let
24 the evidence come out, and then we'll see where this goes.
25 But I'll sustain the objection. If she doesn't have

1 knowledge, then I want you to stay within the scope of this
2 case.

3 BY MR. HARRIS:

4 Q Do I understand what you've done in the last few weeks,
5 you've done searches on the Internet to attempt to determine
6 the status of Signature's Houston office as of February 2023;
7 is that right?

8 A Correct.

9 Q If you had been asked, you could have done these same
10 searches back in February of 2023; right?

11 A Yes. If they asked, yes.

12 Q All right. I want to talk about some of the things that
13 you didn't do in the last few weeks. You did not speak to
14 anyone currently at Flagstar Bank; right?

15 A No.

16 Q And you didn't speak to anyone who used to work at
17 Signature Bank; right?

18 A Not -- not specifically for this -- what we're going into
19 this case for any policies. On other matters for collateral,
20 yes.

21 Q But for purposes of the investigation and for this case,
22 you didn't speak to anyone who used to work for Signature
23 Bank; right?

24 A No.

25 Q You also didn't collect any documents from Signature Bank

1 or its successor, Flagstar; correct?

2 A No.

3 MR. HARRIS: Could -- Mr. Gordon, could you please
4 pull up the U.S. Trustee's Exhibit 3?

5 THE COURT: It's 2004-3. The US Trustee's are 2004;
6 is that correct?

7 MR. HARRIS: Okay, right.

8 THE COURT: Thank you, just wanted to be sure.

9 (Pause in the proceedings.)

10 BY MR. HARRIS:

11 Q And have you seen this document before, Ms. Simmons?

12 A No, I have not.

13 Q Okay. And one -- I just really have one thing to ask you
14 about. If we go down to the bottom of the page, do you see at
15 the very bottom there's a name, Eli Rodriguez, and under it
16 says "account officer name"; do you see that?

17 MS. THOMAS: Your Honor, objection. It speaks --
18 the document speaks for itself. (Indiscernible)

19 THE COURT: Well, she can be crossed on a document,
20 right, that's admitted into evidence.

21 THE WITNESS: Yes, I see that.

22 BY MR. HARRIS:

23 Q You didn't attempt to speak to Mr. Rodriguez, whose name
24 appears above "account officer name"; right?

25 A No, I did not.

1 Q Okay. Have you ever seen the account wiring instructions
2 that Signature Bank sent, that listed the Houston office as
3 the local office? Have you ever seen that?

4 A (No response.)

5 Q I believe you did --

6 A Was that Exhibit 6?

7 Q Yes.

8 A I saw it.

9 Q You didn't attempt to determine who prepared that
10 Signature Bank, those account wiring instructions; did you?

11 MS. THOMAS: Objection, lack of foundation. We
12 don't -- there's no evidence that Signature Bank actually
13 created those wiring instructions.

14 THE COURT: Just -- you're not testifying, counsel.
15 And I think I'm going to overrule the objection.

16 You can answer.

17 BY MR. HARRIS:

18 Q You didn't attempt to determine who at Signature Bank or
19 somewhere else, created those account wiring instructions; did
20 you?

21 A No, I did not.

22 Q You didn't speak to any other Signature representatives
23 to determine what their policies are about sponsoring checking
24 accounts through the Houston office; did you?

25 A No, I did not.

1 Q Did you go to the Greenway Plaza address?

2 A No, I did not.

3 Q Do you know if Flagstar still has an office there?

4 A No, I do not.

5 Q If you had done this investigation in 2023, in February,
6 while Signature was still in operation, could you have spoken
7 to people at that office to determine what activities needed
8 to be done?

9 MS. THOMAS: Objection, speculation.

10 THE COURT: Sustained.

11 BY MR. HARRIS:

12 Q Let me ask it this way. Do you think it might have been
13 a -- do you think you could have more easily determined the
14 status of the Houston office in February 2023 if you had
15 conducted your search in February of 2023?

16 MS. THOMAS: Objection, calls for speculation.

17 MR. HARRIS: Your Honor, this person has been
18 brought up here not as an expert but as an auditor to explain
19 the investigation she did. I should be allowed to find out
20 whether she thinks she could have conducted a better
21 investigation on the status of this office in 2023 if she had
22 done the investigation in 2023.

23 THE COURT: Overruled. She can answer, if she
24 knows.

25

1 BY MR. HARRIS:

2 Q Do you think -- let me ask this. Do you think you could
3 have conducted a more thorough investigation on the status of
4 the Houston office in November of 2023, if you had been asked
5 to do that investigation while it was still in
6 (indiscernible)?

7 A I don't know.

8 Q You didn't -- to be clear -- attempt to determine from
9 Signature's records, whether Signature interpreted the
10 applicable rules such that it could handle checking accounts
11 in its Houston office; right?

12 A No, I did not.

13 Q You didn't also request records from the New York
14 Superintendent of Insurance to determine how the Houston
15 office was recorded at the Superintendent's files, did you?

16 A No, I did not.

17 Q You didn't, for instance, attempt to determine whether
18 Signature had the dispensation from the New York
19 Superintendent of Insurance to allow checking accounts to be
20 sponsored by that office; did you?

21 MS. THOMAS: Objection. Calls for speculation. She
22 already testified she had no personal knowledge of that.

23 THE COURT: I'll sustain.

24 BY MR. HARRIS:

25 Q You didn't do anything to find out how Signature -- well,

1 you didn't go into what rules Signature has about checking
2 accounts being sponsored by its Houston office; did you?

3 MS. THOMAS: Again, Your Honor, she already
4 testified that she had no personal knowledge from New York
5 Banking.

6 THE COURT: Repeat that question again.

7 MR. HARRIS: Sure.

8 BY MR. HARRIS:

9 Q You didn't do anything to attempt to determine what
10 policies Signature had in place in February 2023 about
11 sponsoring checking accounts in its Houston office.

12 THE COURT: Overruled. I think she can testify as
13 to what she was asked to do and asked what not to do.

14 THE WITNESS: No, I did not.

15 THE COURT: It wasn't asked (indiscernible) -- all
16 right.

17 BY MR. HARRIS:

18 Q And you were shown a number of documents in your Direct
19 Examination; do you recall that?

20 A Yes.

21 Q None of those documents said that the Houston office
22 cannot sponsor a checking account; did it?

23 A No, they did not.

24 Q I'm going to show you a document, for cross-examination
25 purposes, and I have moved it into evidence, but let me -- I

1 want to see about the -- it goes to the thoroughness of your
2 investigations, and it is the Debtors' Exhibit 18.

3 MS. THOMAS: Are you going to establish
4 authentication?

5 MR. HARRIS: Well, it's cross-examination. I do not
6 need to put a document into evidence when cross-examining the
7 witness.

8 THE COURT: Okay.

9 BY MR. HARRIS:

10 Q All right. If you could turn to the first page. Do you
11 see at the top corner, it has a website address,
12 www.advertisingco.sec.gov. Do you see that?

13 A Yes, I do.

14 Q And then you see it says IAP Report, and under it Cory
15 Ginasia (phonetic). Do you see that?

16 A Yes, I do.

17 Q I assume you do not know who Mr. Ginasia is; is that
18 right?

19 A Correct.

20 Q And I think you said you did not attempt to interview or
21 meet with any people who used to work at Sorrento's Houston
22 office; correct?

23 A Correct.

24 Q So you don't know what the views are of those people as
25 to the status of the office they worked in or what kind of

1 activities they were allowed to conduct; right?

2 A Correct.

3 Q If we could turn to page 5, do you see there's a box that
4 says "employment." Do you see that?

5 A (No audible response.)

6 Q And under it, it says "Firm Name: Flagstar Advisors,
7 Inc." Do you see that?

8 A Yes.

9 Q And do you see underneath it, it says, "Branch office
10 locations, Flagstar Advisors, Inc., 9 Greenway Plaza, Suite
11 3210, Houston, Texas 77046." Do you see that?

12 A Yes.

13 MS. THOMAS: I'm going to object to that. I think
14 that's hearsay if they're using that to prove the truth of the
15 matter asserted, or that she simply sees that those words are
16 on a page.

17 MR. HARRIS: It is not in evidence and --

18 THE COURT: It's not being offered for the truth of
19 the matter. It's cross-examination. It's to impeach the
20 witness.

21 So you can continue.

22 BY MR. HARRIS:

23 Q And do you see it lists as the branch office location on
24 this page, the 9 Greenway Plaza address; correct?

25 A Yes.

1 Q And can you -- can we turn to page 7 of 8?

2 A (Locating page.)

3 Q You see the section "employment history"? Do you see
4 that?

5 A Yes.

6 Q Okay. And do you see the most recent employment history
7 listed is for Flagstar Advisors; do you see that?

8 A Yes.

9 Q But the one below that is for Signature. Do you see
10 that?

11 A Yes.

12 Q So in the course of your investigation, your Internet
13 searching, did you try typing in the address of the Houston
14 office just to see what would come up? Did you type in
15 9 Greenway Plaza, Suite 3120, Houston, Texas?

16 A No, I did not.

17 Q Okay. So you don't know what descriptions of that
18 office, such as the one we looked here, that would have arisen
19 if you had done that search; right?

20 A If I'd searched it that way, no, sir.

21 MR. HARRIS: Just one second.

22 Nothing further, thank you.

23 THE COURT: Thank you.

24 Anyone else -- anyone else in the courtroom? Any
25 Redirect, counsel?

1 REDIRECT EXAMINATION

2 BY MS. THOMAS:

3 Q Ms. Simmons, do you recall you were just asked if you
4 attempted to review any documents created by Signature Bank?

5 A Yes.

6 Q Okay. And in the course of your investigation, we
7 discussed what has been marked as Exhibit 18, not admitted,
8 but that appeared to be -- well, in the course of your
9 investigation, did you find a document created by Signature
10 Bank?

11 MR. HARRIS: Objection, Your Honor. I believe that
12 the witness is being asked about a document that was not
13 admitted and partly because it was not authenticated. And I
14 also --

15 MS. THOMAS: He --

16 THE COURT: I'm not sure it was within the scope of
17 the Redirect.

18 MR. HARRIS: And I also did not ask if she's
19 reviewed any documents created by Signature Bank. I asked if
20 she requested any documents from Signature Bank and the answer
21 was no.

22 MS. THOMAS: I specifically heard a question about
23 if she reviewed -- made any attempt to review documents
24 created by Signature Bank. And so I just wanted to clarify
25 for the Record.

1 THE COURT: I'll allow it.

2 BY MS. THOMAS:

3 Q Did you review any document created by Signature Bank?

4 A Yes, I did.

5 Q And generally what was that document?

6 MR. HARRIS: Objection, Your Honor. This is
7 hearsay.

8 THE COURT: That was hearsay.

9 BY MS. THOMAS:

10 Q Counsel asked you a lot of questions about sponsoring an
11 account. Do you know what sponsoring an account means?

12 A Not specifically. I do not know that.

13 MS. THOMAS: I think that's all I have. Thank you,
14 Your Honor.

15 THE COURT: Any Cross, further Cross?

16 MR. HARRIS: No, Your Honor.

17 THE COURT: Okay. Ms. Simmons, thank you very much
18 for your time.

19 (Witness Simmons excused.)

20 MS. THOMAS: Your Honor, the next witness we would
21 like to call is the Chief Restructuring Officer, Mr. Meghji.

22 THE COURT: Okay.

23 (Witness Meghji takes the stand.)

24 THE COURT: Mr. Meghji, can you hear me okay?

25 THE WITNESS: (No response.)

1 THE COURT: Maybe you need -- let me try -- just
2 give me one -- Mr. Meghji, can you hear me now?

3 THE WITNESS: Yes. Could you hear me, Your Honor?

4 THE COURT: Yes. Just one moment, please.

5 Okay, Mr. Meghji, let me just ask you to raise your
6 right hand.

7 (Witness sworn.)

8 THE WITNESS: Yes, I do.

9 THE COURT: Okay. And you understand the oath that
10 you took is the same that you would take if you were live and
11 in the courtroom here?

12 THE WITNESS: I do, yes.

13 THE COURT: And I'd ask that you please confirm for
14 me and tell me who's in the room with you?

15 THE WITNESS: Nobody.

16 THE COURT: Are there any notes in front of you that
17 would assist you in your testimony? If there are, I want you
18 to remove them now.

19 THE WITNESS: No, there are none.

20 THE COURT: Okay. And you understand that I want to
21 make sure that you're only looking at the screen and that
22 you're not looking at any phone and that there can be no
23 messages provided to you; do you understand that?

24 THE WITNESS: Yes. My phone is not in front of me
25 and I have a blank piece of paper, so I'll put it away.

1 THE COURT: Okay. And if there are any documents
2 that are going to be shown to you, that we will show them live
3 on the screen so that all can see, okay?

4 THE WITNESS: Thank you.

5 THE COURT: All right. Counsel, you may proceed.

6 MS. THOMAS: Thank you, Your Honor.

7 And just for clarity of the Record, I've conferred
8 with Debtors' counsel and I have no objection to us being
9 efficient with our time and then conducting their Direct and
10 Cross of Mr. Meghji at the same time. And they wanted to
11 utilize Ms. Reckler, I believe, for the Direct, and Mr. Harris
12 for the Cross, and I don't have an issue.

13 THE COURT: Got it. Okay.

14 MS. THOMAS: If the Court doesn't, I have no issue
15 with that.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MS. THOMAS:

19 Q Mr. Meghji, I believe that we met last week. My name is
20 Aubrey Thomas. I'm an attorney with the Office of the United
21 States Trustee.

22 And can you please state your name for the Record?

23 A Mohsin Meghji.

24 Q And what is your role for Scintilla?

25 A I'm the Chief Restructuring Officer of the Sorrento

1 Debtors, which includes Scintilla.

2 Q And Scintilla is a Delaware entity; correct?

3 A Correct.

4 Q Where are you physically located today?

5 A In Manhattan, New York.

6 Q Were you physically in Manhattan, New York between
7 February 9th and the 13th of 2023?

8 A To the best of my recollection, yes.

9 Q Do you recall whether or not you were at Houston at all
10 during that same time period?

11 A I was not.

12 Q Were you involved in the decision of where to file these
13 bankruptcy cases?

14 A No.

15 Q Do you know why the Debtor chose to file in the Southern
16 District of Texas?

17 A The Debtor -- the board of the Debtors was advised by
18 counsel to file in Texas, the way I understand that.

19 MS. THOMAS: If we could please pull up Exhibit 3?

20 (Counsel & staff conferring.)

21 THE COURT: Yeah, absolutely. Just give me one
22 second, Ms. Barcomb, and let me find it. Found you, just give
23 me one second.

24 (Pause in the proceedings.)

25 THE COURT: Ms. Barcomb, you should be there.

1 MS. THOMAS: Thank you.

2 BY MS. THOMAS:

3 Q Okay. Mr. Meghji, can you see the document on the screen
4 in front of you?

5 A Yes.

6 Q And can you please identify the document for the Record?

7 A It's the Signature Bank account application for the
8 account in the name of Scintilla Pharmaceuticals.

9 Q Okay.

10 MS. THOMAS: And I'd just note for the Record that
11 this was stipulated to for admission.

12 Can we scroll down to the signature section?

13 BY MS. THOMAS:

14 Q Mr. Meghji, did you sign this document?

15 A Yes.

16 Q And what date is listed there for your signature?

17 A March 8th, 2023.

18 Q Is this the account agreement for the Signature Bank
19 account of the Debtor, Scintilla, that is at issue for today's
20 hearing?

21 A Yes, I believe so.

22 Q And do you know when this account was actually opened?

23 A I think it was opened around February -- on
24 February 10th.

25 Q Okay. And if the account was opened approximately

1 February 10th, why was the application not completed until
2 March 8th, 2023?

3 A Well, there was obviously a lot going on between the
4 period I got retained and the filing, which was on
5 February 9th, and the filing of the Bankruptcy Petition, which
6 was on February 13th.

7 So these forms administratively came around after, and
8 they were completed in March.

9 Q Now, if we scroll down through -- past the application,
10 let me ask you this: Do you recall reviewing this document in
11 the past?

12 A Yes. I believe it was filled out by one of my
13 colleagues, Ms. Mary Karicki (phonetic). Then I reviewed it
14 before signing.

15 Q And there are some agreements attached to this
16 application that are part of Exhibit 3; correct?

17 A Yes.

18 Q Are you generally familiar with the agreements that are
19 attached to the application?

20 A Very generally, yes.

21 Q Do you know anywhere in the application or the bank
22 agreement that provide where Signature Bank would actually
23 hold Scintilla's funds?

24 A I don't.

25 Q When you signed this application, did you have personal

1 knowledge of whether or not Signature Bank had a branch in
2 Houston, Texas?

3 A I did not.

4 Q Have you personally investigated whether or not Signature
5 Bank has a branch in Houston?

6 A I have not personally investigated that.

7 Q Why did the Debtor open an account with Signature Bank?

8 A I think it was based on advice from counsel, and I was
9 not involved in those discussions as I previously indicated to
10 you in my deposition.

11 Q Do you recall your deposition that occurred on March 5th,
12 2024?

13 A Yes.

14 MS. THOMAS: Okay. Let's turn to Exhibit 26, right?
15 His deposition transcript.

16 THE WITNESS: Yes.

17 MS. THOMAS: I think I got the number right. All
18 right, please pull up 26 and turn to page 33.

19 MR. HARRIS: Before you display it, could you tell
20 me what the purpose is? Are you impeaching? And if so, what
21 line?

22 MS. THOMAS: So just said that --

23 THE COURT: Is it for impeachment purposes?

24 MS. THOMAS: Yes.

25 THE COURT: Okay.

1 MS. THOMAS: His answer now was just inconsistent
2 with what --

3 THE COURT: Let's just -- let's just go again.

4 MS. THOMAS: Okay.

5 Let's go to page 33, please.

6 THE COURT: I just want to hear the direct
7 examination on it, please.

8 MS. THOMAS: Thank you.

9 BY MS. THOMAS:

10 Q Mr. Meghji, do you see at line 6 where I asked you: "In
11 the months that followed, did you retain any personal
12 knowledge that Signature Bank had a branch in Houston, Texas."

13 And do you see your answer there?

14 A Yes.

15 Q And can you read your answer from lines 9 through 16?

16 MR. HARRIS: Objection, Your Honor. This is not
17 impeaching.

18 THE COURT: Well, I don't know yet. I haven't read
19 it.

20 THE WITNESS: Yes. I said: "Listen, the reason we
21 opened an account at Signature Bank was that it was approved
22 by the US Trustee Program, and that is -- that's really what I
23 sort-of cared about in going out of business, which was
24 another experience altogether."

25 MS. THOMAS: Sure. So you --

1 THE COURT: What was the --

2 MS. THOMAS: He testified --

3 THE COURT: Hold on a second.

4 THE WITNESS: Could I just finish?

5 THE COURT: Yeah. Go ahead. No, Mr. Meghji, you
6 can't.

7 THE WITNESS: Yeah. But, no, I am not personally --

8 THE COURT: Mr. Meghji, Mr. Meghji, this is Judge
9 Lopez. I have a question.

10 What was the inconsistent statement?

11 MS. THOMAS: So I had asked him, why did the Debtor
12 open a Signature Bank account. And he said it was because of
13 advice from counsel. And he just -- he testified
14 inconsistently at deposition that I was able to read now, for
15 a different reason.

16 THE COURT: Oh, understood. Agreed. Yep, yep, yep.

17 MS. THOMAS: So I just wanted a clear Record of why
18 he (indiscernible).

19 THE COURT: Got it.

20 MS. THOMAS: Thank you.

21 Okay, we can pull that document down.

22 BY MS. THOMAS:

23 Q Mr. Meghji, I think you may have already answered this,
24 but just so I can make sure I've gotten through everything.
25 Were you personally involved in the opening of the Signature

1 Bank account for Scintilla before the filing of the case?

2 A No.

3 MS. THOMAS: Let's pull up Exhibit 6, please.

4 BY MS. THOMAS:

5 Q Mr. Meghji, do you recognize this document?

6 A I think I'm seeing it for the first time.

7 Q Well, I can represent to you, Mr. Meghji, that this is
8 what has been admitted as Exhibit 6, the wiring instructions
9 at issue in this case.

10 Have you ever reviewed this -- these wiring instructions
11 for the funding of the Signature Bank account?

12 A Is this for the 60,000?

13 Q Correct. I thought the document would be helpful, but
14 perhaps I don't even need it.

15 Were you involved in reviewing any of the wiring
16 instructions for that -- for the transaction in which Sorrento
17 transferred \$60,000 to Scintilla?

18 A No, I was not.

19 Q So you don't recall having seen this document before?

20 A No. As I just said, I'm seeing it for the first time, I
21 think.

22 Q Do you have any personal knowledge of whether or not the
23 funds in the Debtors' Signature Bank account in February and
24 March of 2023 were actually held in a Texas bank branch?

25 MR. HARRIS: Objection. I believe the witness --

1 we're just calling for a legal conclusion.

2 THE COURT: I don't think so.

3 Would you repeat the question?

4 MS. THOMAS: Sure.

5 BY MS. THOMAS:

6 Q Do you have any personal knowledge of whether or not the
7 funds in the Signature Bank account in February and March of
8 2023 were actually held in a Texas bank branch?

9 THE COURT: He can answer as to personal knowledge.
10 I'll overrule your objection.

11 Mr. Meghji, you can answer the question.

12 THE WITNESS: I have no personal knowledge of where
13 those funds were held physically.

14 MS. THOMAS: Thank you.

15 Let's please turn to Exhibit 4.

16 BY MS. THOMAS:

17 Q Mr. Meghji, do you recognize this document?

18 A Yes.

19 Q Okay. What is it?

20 A It's the Signature Bank statement for the period of
21 February 10th to 12th, 2023.

22 Q And what address is listed for Scintilla Pharmaceuticals
23 on this statement?

24 A 4955 Directors Place, San Diego, California.

25 Q Mr. Meghji, were you involved in the decision for

1 Scintilla to open a Post Office Box at the UPS store in Texas?

2 A No.

3 Q Before filing this case -- and let me clarify. I'm not
4 going into the scope of anything that you may spoken with with
5 your attorneys. But before this case was filed, did you have
6 any conversations regarding opening a Post Office Box at the
7 UPS store in Texas?

8 A Not that I can recall.

9 Q Do you know who's responsible for picking up the mail at
10 the Debtors' Post Office Box?

11 A No.

12 Q Do you know if Scintilla actually receives any mail at
13 the Post Office Box?

14 A No.

15 Q Has the Post Office Box been used by the Debtor for
16 anything besides potentially receiving mail?

17 A Not that I'm aware of. And given that Scintilla is a
18 non-operating entity and essentially dormant, I wouldn't
19 expect there to be much mail anyway.

20 Q Okay. Are you aware of any business that Scintilla was
21 conducting at the Post Office Box located in the UPS Store in
22 Texas?

23 A No.

24 Q And I believe you just testified that when you became the
25 CRO, Scintilla was a non-operating subsidiary; correct?

1 A Correct.

2 Q Do you recall testifying at the 341 Meeting of Creditors
3 for Sorrento and Scintilla on May 30th, 2023?

4 A Yes.

5 MS. THOMAS: We can go ahead and pull that up.

6 BY MS. THOMAS:

7 Q At the 341 Meeting on May 30th, where did you believe
8 Scintilla's headquarters were?

9 A 4955 Directors Place, San Diego.

10 Q When did you learn that the address at 7 Switchbud Place
11 was a Post Office Box at the UPS Store?

12 A I don't recall exactly when I knew that.

13 Q Was it prior to the 341 Meeting on May 30th?

14 A It was probably after that because it -- to be honest, I
15 don't recall being focused on the PO Box issue -- I may have,
16 but I just don't recall that -- until it came up in a question
17 in the 341 Meeting.

18 Q Okay. So after the 341 Meeting, what -- did you learn
19 in, let's say, June of 2023 that the Switchbud Place address
20 was a Post Office Box?

21 A I think at the 341 Meeting, when the question -- and you
22 have the transcript -- was posed to me, I think it was on
23 May 30th, that where the headquarters are. My answer was
24 4955 Directors Place in San Diego. And then at some point,
25 counsel had stepped in to address a question of where the

1 principal place of business of Scintilla was, so that was the
2 legal definition of principal place of business. And
3 Ms. Reckler indicated that that was in Houston at The
4 Woodlands, and that was the PO Box.

5 MS. THOMAS: Well, let's go to that -- that section,
6 please. I think it's down on page 23.

7 BY MS. THOMAS:

8 Q Okay. So do you see this -- that document on your
9 screen?

10 A Yes.

11 Q Okay. And we see at around line 20 Mr. Kelly asks you:
12 "Where is Scintilla's principal place of business?" You
13 didn't answer that question, did you?

14 A Not based on the transcript, yes.

15 Q Okay. Who answered that question for you?

16 A Ms. Reckler, as I just said a couple minutes ago.

17 Q And let's read, starting at line 25, what her answer was
18 so it was -- it's really clear. (Reading) "Scintilla has a
19 Post Office Box in Houston" -- next page please -- "and it has
20 a bank account in Houston as well, and its principal place of
21 business is in Houston."

22 Is it your testimony today that that statement by
23 Ms. Reckler gave you notice that Scintilla was utilizing the
24 Post Office Box as its headquarters?

25 A That's my recollection, yes.

1 Q Okay. So as of May 30th, you knew that a Post Office Box
2 was where Scintilla was conducting its business?

3 A I'm sorry. Can you repeat that question?

4 Q So as of May 30th, you understood that the Post Office
5 Box at the UPS Store is where Scintilla was conducting its
6 business.

7 A Scintilla had no operating business. I don't know what
8 you mean by conducting their business.

9 Q Well, I was trying to get a little bit more clarity from
10 your answer because I believe you just testified that you are
11 aware that the headquarters were at this Post Office Box as of
12 that date; correct?

13 A No. I said -- I said earlier that I had answered the
14 question in fact that the headquarters of Scintilla and
15 Sorrento was in San Diego, which is what I had said earlier at
16 the 341 Meeting. And then when Ms. Reckler stepped in to
17 answer that, I think she explained that the legal definition
18 of where the principal place of business of Scintilla was in
19 Houston.

20 Q She didn't say the legal definition of principal place of
21 business in her statement; right?

22 A She's a lawyer, so I assumed that that's what she meant.

23 Q That doesn't necessarily answer my question, Mr. Meghji.
24 She didn't say, in the sentence that we just read onto the
25 Record, that that was a legal definition; correct?

1 MR. HARRIS: Objection, Your Honor.

2 THE WITNESS: Obviously --

3 THE COURT: Hold on, Mr. Meghji. There's an
4 objection, Mr. Meghji. Yes?

5 MR. HARRIS: The transcript speaks for itself.

6 THE COURT: Right.

7 MR. HARRIS: The point of a deposition, of a trans
8 -- this is not to impeach him. The transcript says what it
9 says. In terms of any further questions about what the
10 principal place of --

11 THE COURT: I got it.

12 MR. HARRIS: All right.

13 THE COURT: I'm with you.

14 MS. THOMAS: I can move on.

15 THE COURT: No, no, no, no. I just think, if you
16 want, just point -- I'll let you point to the transcript and
17 see if, you know, you see the word in there. I'll let you do
18 all that if you want. I think it's easier just referring to
19 the depo.

20 MS. THOMAS: Okay.

21 Let's go -- let me see. Let's go to page 10 of the
22 341 testimony, please. And if we can scroll down a little
23 bit, please, where Mr. Duran is asking you right around
24 line 19 and we're going to go from there.

25 Scroll down the page, I'm sorry. My apologies,

1 Mr. Meghji.

2 BY MS. THOMAS:

3 Q All right, so Mr. Duran asked you at line 19 -- do you
4 see his question there?

5 A Yes.

6 Q And -- scroll up, please -- and he asked you if you
7 reviewed the Debtors' Statements, Schedules and Petition;
8 correct?

9 A Can you scroll up to line 19?

10 Q Yes.

11 A Yes.

12 Q And what was your answer to that question?

13 A Yes.

14 Q Okay. So before the 341 Meeting, you reviewed
15 Scintilla's Petition; correct?

16 A I believe so.

17 MS. THOMAS: Okay. And if we could please pull up
18 the Petition for Mr. Meghji?

19 BY MS. THOMAS:

20 Q Mr. Meghji, is this the Voluntary Petition that you
21 reviewed prior to the 341 Meeting?

22 A Can you please scroll down?

23 Q Absolutely.

24 A Yes.

25 MS. THOMAS: If we can go to No. 4, please. No. 4,

1 yeah.

2 BY MS. THOMAS:

3 Q Do you see where it says principal place of business,
4 7 Switchbud Place, Suite 192-513?

5 A Yes.

6 Q And you reviewed this Petition prior to your 341
7 testimony; correct?

8 A I believe so. I mean, this was eight months ago, so I
9 don't -- I can't specifically --

10 Q Sure.

11 A -- recall what I -- and let me finish -- what I reviewed
12 and didn't review.

13 Q But you have no reason, as you sit here today, to doubt
14 your 341 testimony in which you said you reviewed the
15 Petition?

16 A I don't.

17 Q Okay. And still having reviewed this Petition, you
18 considered the San Diego, California address to be the
19 principal place of business, or the head -- excuse me. Let me
20 rephrase that question.

21 Having reviewed this Petition as of May 30th, you still
22 believed the headquarters for Scintilla was in San Diego,
23 California; correct?

24 A I answered the question -- again, going from my
25 recollection -- on the basis of where I dealt with most of the

1 -- where the operating headquarters of the Sorrento Debtors
2 were, including Scintilla. So I don't recall having read this
3 and looked at -- having looked at these two addresses and
4 analyzing which was the legal principal place of business
5 versus the mailing address. Both addresses are on -- on here.

6 This issue has come up now, this whole venue issue. I
7 was focused on what -- you know, working with the management
8 team, with the business, and a lot of other things going on.
9 I certainly wasn't sitting there on May 30th before that
10 meeting thinking about the legal principal place of business,
11 vis-à-vis the mailing address.

12 Nor had I been -- as I've testified previously -- been
13 involved in deciding where to file. So I think you're sort of
14 inflating a lot of things after the fact based on the
15 transcript. But I just wanted to kind of explain that.

16 Q Well, sure, Mr. Meghji. Thank you for your explanation.

17 I just want to be clear, because I believe your testimony
18 already today was that you didn't know 7 Switchbud Place was a
19 Post Office Box at the UPS Store until May 30th; correct?

20 A Correct.

21 Q Okay.

22 A But I think we had already established that.

23 THE COURT: Mr. Meghji, I just want to make sure
24 that you can only answer the questions that are asked.
25 Additional commentary, you can probably -- you'll have another

1 -- your lawyers will be able to ask you, but I just want you
2 to answer the questions.

3 THE WITNESS: Okay. And my apologies.

4 BY MS. THOMAS:

5 Q Mr. Meghji, when did you -- I'm still not sure, and I
6 apologize if I'm asking you the same question. When do you
7 recall the date that you learned 7 Switchbud Place was a UPS
8 Store?

9 A I don't -- I'm trying to answer that. I don't recall the
10 exact date when I learned that. But it makes sense to me,
11 sitting here today, that what I recall is that the first time
12 I generally would have focused on that was at that 341 Meeting
13 or shortly after.

14 Q What action -- when you finally learned that the
15 7 Switchbud Place was a UPS Store, what action did you take to
16 notify parties of this fact?

17 A I'm sorry. Nothing. What parties of what act? This was
18 -- on the Petition, it was fully disclosed. I don't know
19 what --

20 Q Thank you, Mr. Meghji. Thank you.

21 MR. HARRIS: Your Honor --

22 THE COURT: I'll allow it. Go ahead. You can ask
23 your next question.

24 MR. HARRIS: I was just going to say I'd ask that
25 counsel not cut off the witness.

1 THE COURT: No, understood. Understood.

2 MS. THOMAS: Just a moment, Your Honor. I want to
3 make sure that I've gotten through everything that I wanted to
4 address with Mr. Meghji.

5 BY MS. THOMAS:

6 Q Mr. Meghji, we've heard your counsel speak towards their
7 concerns with the transcript, venue. I would like, if you
8 could, please explain to the Court any concerns you have as
9 the CRO with transferring venue at this time.

10 A Yes. My concern with transferring venue at this time is
11 this has been a long, complicated, and difficult case. We got
12 a sale approved last Friday. There's still some work to do to
13 close that sale. And I'm hopeful that the Equity Committee --
14 the Equity Committee's efforts in bringing forth an allowed
15 sale deal will be successful.

16 I strongly believe that the way to maximize the remaining
17 value of the estate, for the benefit of creditors and maybe
18 ultimately the equity holders as well, is to close the sale
19 and hopefully, you know, do all the transactions and stuff to
20 get that done.

21 That's what I'm focused on. And moving this to a new
22 venue with all the history, 12-plus months of history has been
23 the case, will make that more difficult and far less
24 efficient.

25 Q Can you explain how transferring to another District

1 Court for the administration of this case would actually
2 impact the closing of the sale?

3 A There could be -- well, the history of this case is that
4 even when sales have sometimes been agreed upon, agreements in
5 some way, there could be issues that come up between the
6 agreed contracts and closing sales that's happened in a couple
7 of instances, and that we may need the Court's help in
8 adjudicating issues related to the sale.

9 And if those are required, it will be a very significant
10 impediment to getting those issues resolved and the case
11 closed. And I think that if the Equity Committee brings forth
12 a proposal, then there may be changes required to the Plan or
13 to the sale agreement to let that happen. And this Court is
14 now up-to-speed on all of those issues and the difficult
15 complicated history of this case.

16 So I think that's really my concern.

17 Q Do you have any personal knowledge that a Bankruptcy
18 Judge in Delaware or the Southern District of California could
19 not timely address any issues that might come up in the
20 closing of the sale?

21 A My judgment -- I obviously don't have any personal
22 knowledge about a change of judge.

23 Q Okay. And what is that judgment and opinion based upon?

24 A The history and complexity of this case.

25 Q But the history and the complexity of this case doesn't

1 inform what another Court could accomplish; right?

2 A I think I told you that was my judgment.

3 Q Okay.

4 MS. THOMAS: That's all I have. Thank you.

5 THE COURT: Thank you.

6 Mr. Meghji, why don't we take just -- if I could
7 just grab some more water. Why don't we just take about five
8 minutes and I'll come back out.

9 Mr. Meghji, I want you to speak with no one. If you
10 can, stay on the camera. I want to make sure you speak with
11 no one, check no notes. You're still under oath, okay.

12 We'll come back in five minutes.

13 THE WITNESS: Your Honor?

14 THE COURT: Yes.

15 THE WITNESS: Could I go to the restroom?

16 THE COURT: Oh, of course, yeah. No, that was a bad
17 one. Yeah, you're allowed to go to the restroom.

18 (Recess taken from 11:29 a.m. to 11:35 a.m.)

19 THE COURT: Please be seated.

20 We are back on the Record in Sorrento.

21 Mr. Meghji, I'm reminding you that you are still
22 under oath. We will now proceed with examination. So --

23 MS. RECKLER: Your Honor, Caroline Reckler on behalf
24 of the Debtors. Just procedurally would you like us -- it may
25 be most efficient if we take out the rest of our exhibits that

1 have not yet been admitted.

2 THE COURT: I'll let you proceed however you want.

3 MR. HARRIS: All right. Chris Harris again. So our
4 remaining exhibits, and they're at Docket 2005, our Exhibits
5 12 through 18.

6 THE COURT: Give me a second.

7 MR. HARRIS: So Exhibit 12 is the transcript of the
8 Third 341 Meeting conducted by the US Trustee, Exhibits 13
9 through 16 are emails between the Debtors and the US Trustee.
10 We can stop there and see if we have any objections
11 to those.

12 MS. THOMAS: Yes, I mean our first objection was
13 simply that these were not filed until yesterday and so we
14 haven't had sufficient notice, they're untimely and should not
15 be admitted for that reason.

16 THE COURT: Okay. What's your response, Counsel?

17 MR. HARRIS: Your Honor, these are rebuttal
18 exhibits. It's actually quite difficult for me to supplement
19 their Exhibit List. There's no prejudice as these are
20 documents that the US Trustee actually had, they're even the
21 US Trustee's documents. They are the transcript from a
22 341 Meeting that the US Trustee conducted, and there are
23 emails with the US Trustee. So there's no surprise.

24 And the reason why they're rebuttal is because
25 there's --

1 THE COURT: I don't want -- I don't want anything
2 outside the presence of the witness. Both of you have in your
3 Witness and Exhibit List that you've reserved the right to put
4 any rebuttal exhibits, or any exhibit. Both of you have it,
5 so it's fair game. I'll allow it.

6 If it's purely rebuttal, I'll allow it because both
7 of you -- I'll overrule the objection because both of you
8 reserved the right and -- to represent rebuttal exhibits, and
9 so if it's purely rebuttal, we'll see where it goes, but
10 you're going to have to -- you going to have to prove that
11 it's rebuttal.

12 I mean, I'm just noting 2004 and 2005, both
13 documents, both say any rebuttal -- "Any exhibits necessary
14 for the impeachment and/or rebuttal purposes." So everybody
15 was on notice that they could come in and both of you reserved
16 the right, and I'll give -- extend the same courtesy to the US
17 Trustee's Office if they have any rebuttal exhibits that they
18 would need to present in light of the evidence presented, so
19 admitted.

20 (Exhibit Nos. 12 and 13 through 16 received into
21 evidence.)

22 MS. THOMAS: Well, so the secondary concern that we
23 have, Your Honor, is that the emails, there's no one here to
24 testify as to those emails, they're hearsay, and I don't see
25 why they're relevant.

1 THE COURT: No, I'm not (indiscernible) for now --

2 MS. THOMAS: Okay.

3 THE COURT: -- I'm just saying on the timeliness
4 we'll --

5 MS. THOMAS: Okay.

6 THE COURT: -- have to play this out and see where
7 it goes.

8 MS. THOMAS: Sure. Okay.

9 THE COURT: Yeah. No, no, I think that's fair.

10 MR. HARRIS: The emails, just to be clear, are --

11 THE COURT: No, no, you can try to get them in, if
12 you can.

13 MR. HARRIS: Can I just -- they're -- I don't know
14 if the objection is authenticity. If so, Mr. Duran was on all
15 the emails and he is here and we call him to authenticate
16 them. I can't believe there is an objection to the
17 authenticity.

18 THE COURT: If there is or not, that's what I'm
19 saying, we'll take it up as we go and --

20 MR. HARRIS: Okay. And as to hearsay, they are
21 party admissions to the extent they're statements by the US
22 Trustee, and they are --

23 THE COURT: You all are playing this out before
24 any --

25 MR. HARRIS: Okay. And I think we're trying to

1 decide the admissibility of the exhibits --

2 THE COURT: No, no, I -- we were -- no, I was just
3 taking up whether you could even ask questions about some of
4 these documents in the first instance.

5 MR. HARRIS: All right.

6 THE COURT: No, no, no, no worries.

7 Ms. Reckler.

8 MS. RECKLER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. RECKLER:

11 Q Mr. Meghji, I will try to be very brief and not
12 repetitive.

13 THE COURT: Just so you know, from a housekeeping
14 standpoint, I've given Mr. Gordon the presenter.

15 MS. RECKLER: Thank you.

16 THE COURT: Okay. Just in case. And I will do the
17 same with the US Trustee, just in case. I'll do a better job
18 of that, I apologize.

19 Go ahead.

20 BY MS. RECKLER:

21 Q Mr. Meghji, when did you first become employed by the
22 Debtors?

23 A February 9 of '23.

24 Q And what services does your firm provide to the Debtors?

25 A We're the Chief Restructuring Officer of the Debtors and

1 we also are providing financial advisory services and
2 (indiscernible).

3 Q And does this include treasury and cash management
4 oversight of the Debtors?

5 A Yes.

6 Q And I think we've heard the name Mary Korycki from your
7 office earlier. Does Ms. Korycki oversee the treasury
8 function?

9 A She does, she's the senior director at our firm and she
10 oversees all of the Debtors' treasury and cash management
11 functions.

12 Q Okay. Thank you.

13 Just to be abundantly clear can you name the two Debtors
14 in these cases here?

15 A Sorrento Therapeutics and Scintilla Pharmaceuticals.

16 Q And they both filed for bankruptcy on February 13, 2023.
17 Is that correct?

18 A Yes.

19 Q And are you aware now that Scintilla has a mailbox in The
20 Woodlands, Texas?

21 A I am.

22 Q And are you aware that Scintilla opened the PO Box the
23 day before it filed for bankruptcy?

24 A Yes.

25 MS. RECKLER: And can we turn to, I believe it's

1 Debtors' Exhibit 3, which is the Petition.

2 BY MS. RECKLER:

3 Q In Question 4 is the PO Box listed on the face of the
4 Scintilla Petition?

5 A Yes.

6 Q And was this PO Box opened at a UPS Store?

7 A Yes.

8 MS. RECKLER: Can we pull up Debtors' Exhibit 17?

9 BY MS. RECKLER:

10 Q Have you seen this document before?

11 A Yes.

12 Q Can you tell the Court what this document is?

13 A This is a printout of the frequently asked questions from
14 the UPS website.

15 Q And have you personally been on the UPS website?

16 A Yes.

17 Q And is this a copy of the UPS website representative and
18 an accurate copy of what you saw on the UPS website?

19 A Yes.

20 MS. RECKLER: Your Honor, I'd like to move this
21 document into evidence.

22 THE COURT: Any objection?

23 MS. THOMAS: Yes, Your Honor, we -- you know, I
24 appreciate that Mr. Meghji is testifying that he looked it up,
25 but we have no representative to question its hearsay, I don't

1 know if he's the one who actually pulled this document for
2 purposes of attaching it to the exhibit. I don't know what he
3 testify to about this document that could be of any relevance.

4 THE COURT: Okay. I'll try and give you an
5 opportunity to see if you can more foundation in, but I'm not
6 letting it in.

7 BY MS. RECKLER:

8 Q Mr. Meghji, does this document speak to information
9 provided to customers as to how to open up a mailbox and what
10 you can do with the mailing address of that mailbox?

11 MS. THOMAS: Objection, it calls for hearsay.

12 THE WITNESS: I believe so, yes.

13 THE COURT: Hold on a second, there's an objection,
14 it calls for hearsay. What's your response?

15 MS. RECKLER: Your Honor, it doesn't go to the truth
16 of the matter, it goes to what UPS is advising its customers.

17 THE COURT: How would he know?

18 MS. THOMAS: Yeah, I mean what they're advising is
19 hearsay.

20 THE COURT: Yeah, sustained.

21 MS. RECKLER: Your Honor, it's the effect on the
22 recipient is --

23 THE COURT: Well, the question is was he a
24 recipient, that's where I'm going. In other words that he
25 received it.

1 MS. RECKLER: Well, as a reader of the website we
2 believe that would make him a recipient of the information
3 being provided by UPS.

4 THE COURT: If that's what you want to use it for,
5 I'll take it for (indiscernible), but I'm not sure how much it
6 weight it goes, excuse me, but I'll allow it for that purpose.

7 MS. THOMAS: Just for the Record, Your Honor,
8 Mr. Meghji has already testified -- well, we haven't heard any
9 testimony of when he actually looked at this website. So
10 would it be relevant if he read about it today? Probably not.
11 Nobody has taken more relevancy credit since February of 2023.

12 THE COURT: It's a fair question. Why don't you ask
13 the question?

14 BY MS. RECKLER:

15 Q Mr. Meghji, did you read the UPS website in the last few
16 days prior to this hearing?

17 A Yes.

18 Q And is it fair to say you did not do that in February of
19 2023?

20 A Correct.

21 MS. RECKLER: Your Honor, the question that we're
22 really trying to elicit from Mr. Meghji is actually quite
23 simple, and it is, is it your understanding, based on the UPS
24 website, that you do not need to list the PO Box in the
25 address to receive mail at this mailbox?

1 MS. THOMAS: And I would object, Your Honor, for --
2 THE COURT: Sustained.

3 MS. RECKLER: Can we turn back to Exhibit 3, please?
4 Can we scroll down to Question 4?

5 BY MS. RECKLER:

6 Q Mr. Meghji, do you see where it says, PO Box 513?

7 A Yes.

8 Q And in the line above it does it read, 7 Switchbud Place,
9 Suite 192-513?

10 A Correct.

11 Q Do you understand the 513 in the second -- in the first
12 line to be the same 513 in the second line?

13 A Yes, I see that.

14 Q Is it your understanding that the Debtors could receive
15 mail at this mailbox by simply listing 7 Switchbud Place,
16 Suite 192-513 while omitting PO Box 513?

17 A Yes.

18 Q Can you do anything in a PO Box other than receive mail?

19 A I don't believe so.

20 Q Can you have meetings inside a PO Box?

21 A Not to my knowledge.

22 MS. RECKLER: I think we've belabored this enough, I
23 will move on.

24 BY MS. RECKLER:

25 Q Also in Exhibit 3 what is listed as the Debtors',

1 Scintilla'S mailing address?

2 A 4955 Directors Place, San Diego, California.

3 Q So does this disclose that the PO Box was not used as the
4 mailing address?

5 A Correct.

6 Q So by listing this address as a PO Box and listing a
7 different mailing address what did this disclose to readers?

8 MS. THOMAS: Objection, calls for speculation, he
9 doesn't know what it (indiscernible).

10 THE COURT: He can certainly testify as the CRO as
11 to what his understanding is as to what the Petition was
12 intended to communicate. I'll take it for that reason, but
13 not for what may have been in the mind of a specific reader,
14 or what he understood these two addresses to mean and the
15 difference.

16 THE WITNESS: Yeah, in my mind this is that the
17 legal principal place of business was the Switchbud Place
18 PO Box and the actual mailing address was in San Diego,
19 California.

20 MS. RECKLER: Thank you, Mr. Meghji.

21 BY MS. RECKLER:

22 Q Turning now to the bank accounts, I think you testified
23 that you're aware that Scintilla had a bank account at
24 Signature Bank. Correct?

25 A Correct.

1 Q And you're aware that that bank account was opened just a
2 few days before the bankruptcy filing. Correct?

3 A Correct.

4 Q I think you testified earlier that in early March of 2023
5 Signature Bank failed. Correct?

6 A Yes.

7 Q Why was this significant to these specific Debtors?

8 A The Signature Bank failure?

9 Q Correct.

10 A Because we had 20 million approximately, a little over
11 \$20 million in cash at Signature Bank --

12 Q And that was the --

13 A -- which was the proceeds of the initial DIP funding,
14 which was about 27-1/2 million that we had drawn and deposited
15 into the Signature Bank account.

16 Q So it's safe to say that all of the Debtors' money in
17 early March of 2023 was at Signature Bank?

18 A Correct. Well, I mean, there were a couple of other
19 smaller bank accounts at Bank of America, but most, the vast
20 majority of the Debtors' cash was at Signature Bank.

21 Q Thank you, Mr. Meghji.

22 And as part of the failure of Signature Bank in early
23 March of 2023 were there extensive communications with the
24 United States Trustee about the Signature account and finding
25 a replacement bank?

1 A Yes.

2 Q And did your office provide the United States Trustee
3 documents about the Signature Bank account including bank
4 statements?

5 A Yes, I believe so.

6 Q And did those documents show an opening balance of \$0 and
7 a closing balance of \$60,000?

8 A Yes, between the period February 10th and 12th.

9 Q And did those documents show from where Scintilla
10 received the \$60,000?

11 A Yes, I believe the documents showed that the money came
12 in from Sorrento Therapeutics.

13 MS. RECKLER: Can we pull up Exhibit 13?

14 BY MS. RECKLER:

15 Q Mr. Meghji, do you recognize this document?

16 A Yes.

17 Q Can you describe what this document is?

18 A This is an email from -- email record of information
19 forwarded to the US Trustee's office, to Mr. Snow (phonetic)
20 and a copy to Mr. Duran on March 12 --

21 Q And --

22 A -- which shows the account -- or it shows the account
23 information and balance for each of the Debtors' bank
24 accounts.

25 Q Okay. Just to be clear, when you say March 12, that's

1 March 12, 2023?

2 A Correct.

3 Q Okay.

4 MS. RECKLER: And can we scroll down further,
5 please?

6 BY MS. RECKLER:

7 Q Is one of the attachments a Scintilla bank account
8 statement from Signature Bank?

9 MS. THOMAS: Your Honor, I think I've already
10 objected to admission of the exhibit and asking questions in
11 regards to them.

12 THE COURT: Are you asking about this document here,
13 Ms. Reckler?

14 MS. RECKLER: Yes.

15 THE COURT: Okay. I think that document has already
16 been --

17 MS. RECKLER: Correct.

18 THE COURT: -- admitted, that page, or at least
19 that page, I don't know if you want to pull up the same doc,
20 just so we can avoid --

21 MS. THOMAS: No, I think that the concern was the
22 emails.

23 THE COURT: The emails attachment, no, no, but
24 that's where I'm going, I'm just kind of being really careful.

25 MS. THOMAS: Yes.

1 THE COURT: If what you're asking questions are
2 about that page --

3 MS. THOMAS: That's fine.

4 THE COURT: -- I've got no issues. But if you want
5 more than that, then I agree, counsel has the opportunity to
6 object.

7 MS. THOMAS: If it's just that page, that's fine,
8 the emails.

9 MS. RECKLER: Your Honor, I'd like to move the
10 emails establishing the time line of when that document was
11 provided into evidence. There are a number of people on these
12 emails that are in the courtroom today that can authenticate
13 them.

14 THE COURT: Counsel?

15 MS. THOMAS: My understanding is that we're using
16 these exhibits solely for rebuttal purposes, and so I don't
17 think I understand what the -- because she doesn't dispute
18 that we were regularly given documents by Debtors in regards
19 to their bank accounts. I'm not sure what fact they're
20 rebutting.

21 THE COURT: I think it's -- well, go ahead, handle
22 it. Well, Ms. Reckler, why don't you answer, you're here.

23 MS. RECKLER: Your Honor, the United States Trustee
24 made very clear in their opening that they weren't aware of
25 when the Signature Bank was opened, and I think this document

1 and the emails detail exactly what was transmitted to the
2 United States Trustee and when.

3 MS. THOMAS: I think our argument is different. I
4 think our argument is simply that we --

5 THE COURT: I mean we can do this one of two ways, I
6 mean --

7 MS. RECKLER: Yeah.

8 THE COURT: -- Mr. Duran is there, you can put him
9 on the stand if you want and you can put him up and I'll allow
10 it, or you can authenticate documents.

11 Now it's really -- it's either a party admission --
12 I think you have -- I think that there are a lot of questions
13 that have been asked about when that document -- you did ask
14 Mr. Meghji about when the document -- you know, that the
15 Signature Bank account was opened and whether he had done
16 any -- what his scope of knowledge was. I think -- you know
17 what I mean?

18 MS. RECKLER: Yeah, and Mr. Meghji --

19 THE COURT: Okay.

20 MS. RECKLER: -- has no personal knowledge, he's --

21 THE COURT: Okay. All right.

22 MS. RECKLER: -- he's not on the emails.

23 THE COURT: I'm just trying to avoid Mr. Duran
24 getting on the stand and answering questions, but if that's
25 what you want to do. I've got no issues with that

1 (indiscernible). I'm just trying to -- if that's -- if that's
2 where we're going, I'm serious, I've got no issues with that
3 and I was just -- the US Trustee has -- did ask questions
4 about -- and Mr. Meghji may not be the right witness, I agree
5 with that. But the right witness is right there, and maybe we
6 can just get him on at some point.

7 So I'll allow you to -- I'll sustain your objection.
8 We can just -- you can ask if he has personal knowledge of the
9 documents here, but we can -- we can certainly get him on if
10 we have to.

11 MS. RECKLER: But --

12 THE COURT: Just to authenticate the document if
13 that's what we're doing. There is an opportunity to rebut,
14 the Trustee did ask a question and it has raised questions
15 about when -- what the Trustee knew or didn't know. Right?
16 And you're saying no one's objecting whether we have specific
17 knowledge about what was going on, or whether they get general
18 information. Right? Whether the Trustee gets general
19 information.

20 But the question that is now is, is, you know, what
21 specific information and when did -- what the Trustee did or
22 didn't know. In other words, all I'm saying is I'll sustain
23 your objection, and that just means Mr. Duran will have to get
24 on the stand and we'll see where it goes. That's all I mean.

25 MS. THOMAS: Well, I want to reserve the right -- so

1 my concern is that Mr. Meghji's not on these emails and he's
2 testifying about emails for which he has no personal
3 knowledge.

4 THE COURT: Yes, but --

5 MS. THOMAS: So that's that piece.

6 THE COURT: No, that's what I'm saying --

7 MS. THOMAS: If they want to call Mr. -- okay.

8 THE COURT: No, no, no, I'm saying --

9 MS. THOMAS: If they want to call Mr. Duran, he was
10 never listed on the Witness and Exhibit List and we never --

11 THE COURT: Both of you -- both of you listed
12 impeachment -- both of you listed witnesses for impeachment
13 purpose. Right? Or supplemental for rebuttal purposes. Both
14 of you listed, everybody knows how it works.

15 MS. THOMAS: Certainly, but as a federal employee,
16 as well, there are certain requirements that you have to
17 follow in order to call a federal employee as a witness.

18 THE COURT: And I'm going to let him -- you're not
19 going to be able to use it as a short (indiscernible). Right?
20 You're not going to be able to use that you have -- both of
21 you have the right to do so.

22 You can raise your objection, both of you can raise
23 your objections, I'm not saying that, but the United States
24 isn't going to be given any more deference than any other
25 witness who's here and potentially listed.

1 You all are going to have to figure out what you
2 want to do, but -- and maybe Mr. Duran says he can't answer
3 the question, but he's here. The door -- the door has been --
4 in other words the United States Trustee, you can stipulate to
5 the fact that you've received emails on these dates. I've got
6 no issues with that. But if you want to say that you -- you
7 want to get into evidence that you didn't --

8 MS. THOMAS: No.

9 THE COURT: That's what I'm saying, this is --

10 MS. THOMAS: Maybe you're making much ado about
11 nothing.

12 THE COURT: No, no, what I'm saying is maybe the
13 parties can just stipulate to certain facts.

14 MS. THOMAS: You sent and we received this email, I
15 don't have a problem stipulating to that fact.

16 THE COURT: Okay.

17 MS. THOMAS: What you were going to ask Mr. Meghji
18 about it, that was my concern because he wasn't a party to
19 these emails.

20 THE COURT: I think that's fair.

21 MS. THOMAS: Okay.

22 THE COURT: So, wait, wait, so we're just
23 stipulating to --

24 MS. THOMAS: Admission for the fact that these
25 documents --

1 THE COURT: That those --

2 MS. THOMAS: -- and this email was sent.

3 THE COURT: -- the emails were sent on this date
4 and they said these words, and no questions about -- no
5 questions to Mr. Meghji because he's not on these emails.

6 MS. THOMAS: Exactly, Your Honor. Thank you.

7 THE COURT: I think that's -- I think that's fair.

8 MS. RECKLER: Thank you.

9 Can we pull up Exhibit 9, which I believe is already
10 admitted into evidence.

11 BY MS. RECKLER:

12 Q Mr. Meghji, do you recognize this?

13 THE COURT: Ms. Reckler, can I ask you, before he
14 answers that question, I know that there are two -- well, I
15 think there's Exhibit 9 in 2004 and 2005, I just want to know
16 which Exhibit 9 we're talking about. Your Exhibit 9 or --

17 MS. RECKLER: My Exhibit 9, yes.

18 THE COURT: Okay. So that would be 2005-9. Okay.
19 I apologize.

20 BY MS. RECKLER:

21 Q Mr. Meghji, do you recognize this document?

22 A Yes.

23 Q And what is it?

24 A The Amended Schedules of Assets and Liabilities for
25 Scintilla Pharmaceuticals.

1 Q And did your help to prepare this?

2 A Yes.

3 Q Can you tell us on what day it was filed? And if you
4 need us to flip to the end of the document, we can do that.

5 A Yes, that would be very helpful.

6 (Pause in the proceedings.)

7 THE COURT: And can you make this a little bit
8 larger too just for -- I'm just -- I'm not telling you where
9 to go, I'm just saying whenever you -- whenever you get ready
10 to ask a question just blow it up.

11 THE WITNESS: May 29, 2023.

12 MS. RECKLER: Thank you.

13 Can we turn now to Page 17?

14 THE COURT: Are you using the -- where you kind of
15 make it a full page -- ah, thank you.

16 BY MS. RECKLER:

17 Q Mr. Meghji, do you see any information about a bank
18 account listed here?

19 A Yes.

20 Q And what is that?

21 A The Signature Bank checking account, the last four digits
22 of the account are 7311, and the current value of the Debtors'
23 interest is \$60,000.

24 MS. RECKLER: Can we pull up Exhibit 8, please?

25 BY MS. RECKLER:

1 Q Mr. Meghji, do you recognize this document?

2 A Yes, this is the Statement of Financial Affairs for
3 Sorrento Therapeutics.

4 Q And did your team help to prepare this document?

5 A Yes.

6 Q And on what day was it filed?

7 A If you could scroll down, I believe it was the same date
8 of May 29, 2023, but I want to confirm that.

9 Oh, this was filed on June 16, 2023.

10 MS. RECKLER: Mr. Gordon, can you turn to page 52,
11 and can you try to make that as big as possible on page 52?

12 (Pause in the proceedings.)

13 BY MS. RECKLER:

14 Q Does this also show the transfer of \$60,000 from Sorrento
15 to Scintilla?

16 A Yes, the fifth line from the bottom -- sorry, it's
17 moving -- it says, \$60,000 in the Scintilla account on
18 February 10, 2023.

19 Q To your knowledge before that transfer did Scintilla have
20 any cash with which to open a bank account?

21 A No.

22 Q And after the Signature Bank collapsed in early March of
23 2023 were there continued discussions with the United States
24 Trustee specifically about moving the Debtors' bank accounts?

25 A Yes.

1 MS. RECKLER: Your Honor, I'd like to turn to
2 Exhibits 14, 15, and 16.

3 Your Honor, we offer these exhibits for admission
4 for a limited purpose, and that's to establish that the
5 Debtors sent these emails and they were sent to the United
6 States Trustee on the date included in the email transmission.

7 THE COURT: Are you talking about 14, 15 and 16?

8 MS. RECKLER: Yes, Your Honor.

9 THE COURT: Any objection?

10 MS. THOMAS: No, Your Honor.

11 THE COURT: Okay. 14, 15 and 16 are admitted for
12 the purposes of establishing that there were emails sent on
13 days to parties and that they sent what they said.

14 (Exhibit Nos. 14, 15 and 16 received in evidence.)

15 BY MS. RECKLER:

16 Q And, Mr. Meghji, did you direct your team and your
17 counsel to send these emails to the United States Trustee to
18 provide them with the information they requested regarding the
19 Debtors' bank accounts?

20 A I did.

21 Q Mr. Meghji, are you familiar with what an initial Debtor
22 interview is?

23 A Yes.

24 MS. RECKLER: Can we pull up Exhibit 13?

25 BY MS. RECKLER:

1 Q Mr. Meghji, under your supervision was M3 responsible for
2 attending the initial Debtor interview?

3 A Yes.

4 Q And did you personally participate?

5 A I believe so, with Ms. Korycki.

6 Q And in advance of that meeting did you and your team
7 gather information requested by the United States Trustee?

8 A We did.

9 MS. RECKLER: Your Honor, I'd like to offer
10 Exhibit 13, the transmission of the information by the
11 Debtors' advisors to the United States Trustee.

12 THE COURT: I don't see anything in here that shows
13 that something was transmitted. If you want to admit it for
14 the purposes of the email was sent, kind of the same
15 stipulation? No, that was part of the larger --

16 MS. RECKLER: Yes, Your Honor.

17 THE COURT: These documents have already been
18 admitted, right?

19 MS. RECKLER: Correct.

20 THE COURT: Any objection?

21 MS. THOMAS: Your Honor, I think (indiscernible)
22 we're just admitting -- I don't think the US Trustee is
23 denying that we received certain bank documents in connection
24 with (indiscernible). If that's the purpose for it, fine.

25 MS. RECKLER: That's fine, Your Honor. I just want

1 to be clear that we want the Record to reflect why these
2 documents were sent, not just that they were sent.

3 THE COURT: The date of the email was -- let's see
4 what it says. Yeah, there. 13, 14, 15 and 16 -- do I have
5 that right? -- are admitted for essentially the same purpose
6 of showing that there were emails to and from and say what
7 they said on the date they were sent.

8 MS. RECKLER: Correct, Your Honor.

9 THE COURT: Okay. Thank you.

10 (Exhibit Nos. 13 through 16 received in evidence.)

11 BY MS. RECKLER:

12 Q Mr. Meghji, to your knowledge did any of the requests
13 from the United States Trustee did those include information
14 about the Debtors' PO Box?

15 A I believe so.

16 Q Let me ask the question again, I just want to make sure
17 you heard me. I'm not speaking about bank accounts, I'm
18 speaking about the PO Box.

19 Did the United States Trustee request information about
20 the Debtors' PO Box prior to the IDI meeting?

21 A Not that I'm aware of. Sorry, I misheard the question,
22 your earlier question.

23 Q And in March of 2023 the United States Trustee conducted
24 an initial Debtor interview in this case. Correct?

25 A Yes.

1 Q And is it your understanding that one of the purposes of
2 that meeting is for the United States Trustee to ask the
3 Debtor questions, including questions about their assets and
4 their business?

5 A Correct.

6 Sorry, Your Honor, could I just take -- could I get a
7 one-minute break because I just need to let my colleagues know
8 on some other matters that I will not be able to make a
9 meeting. I had originally pushed the meeting --

10 THE COURT: How much more do you have?

11 MS. RECKLER: Ten to 15 minutes.

12 THE WITNESS: Can I take --

13 THE COURT: You're on the stand so I'm not going to
14 let you off. Please continue.

15 THE WITNESS: Okay.

16 (Pause in the proceedings.)

17 THE COURT: Let me just ask -- which is fine. No,
18 no, no, what you're going to do is send the -- kind of go out
19 there, I don't want you talking to anyone, but what you're
20 going to do is kind of stand at your computer and send a
21 message saying, I can't make the meeting or something. The
22 Trustee --

23 THE WITNESS: That's all I want to do is --

24 THE COURT: Okay.

25 MS. THOMAS: Or, Mr. Meghji, I can have my team send

1 an email to your colleagues letting them know that you're on
2 the stand and unavailable.

3 THE WITNESS: I need to let -- it's a different
4 group of people.

5 THE COURT: I'll let you -- are you going to sit
6 there -- right there and send it?

7 THE WITNESS: Yes.

8 THE COURT: Go ahead. You got 60 seconds. Let's
9 go.

10 (Pause in the proceedings.)

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Proceed.

13 BY MS. RECKLER:

14 Q Mr. Meghji, did you participate in the 341 Meetings?

15 A I did.

16 Q And there were three sessions. Correct?

17 A Yes, in April, May and June.

18 Q And that the first meeting was called and then adjourned
19 without any questions?

20 A Correct.

21 MS. RECKLER: Can we turn to the second session of
22 the 341 Meeting and pull up Exhibit 5?

23 Can we turn to page 5, please?

24 BY MS. RECKLER:

25 Q Mr. Meghji, did Mr. Duran ask you if Scintilla was a non-

1 operating subsidiary?

2 A Correct, on Line 20 of this, it is says Mr. Duran asked
3 me that question and I replied yes.

4 Q And did Mr. Duran also ask where the Debtors'
5 headquarters and books and records were located?

6 A Correct.

7 Q And how did you answer?

8 A On Line 25 I said the headquarters are at 4955 Directors
9 Place in San Diego.

10 Q All right.

11 MS. RECKLER: Can we turn to the bottom of Page 12?

12 BY MS. RECKLER:

13 Q Did Mr. Duran ask about the Debtors' bank accounts?

14 A He did.

15 Q And did your colleague, Ms. Korycki, answer that one
16 account was the Scintilla account at Signature Bank?

17 A Correct, the top of Page 12 at Line 1 she said, "We still
18 have one at Signature Bank which is the Scintilla account that
19 we're looking -- we're in the process of transferring it over
20 to Bank of America."

21 MS. RECKLER: So let's go to Page 24 now.

22 BY MS. RECKLER:

23 Q Mr. Meghji, do you know who Mr. Kelly is?

24 A Yes, he was the lawyer from Quinn Emanuel.

25 Q And who was his client?

1 A The Nant parties.

2 Q And at the time were they the Debtors' largest creditor?

3 A Correct.

4 Q And did Mr. Kelly ask where Scintilla's principal place
5 of business was?

6 A Yes.

7 Q And did I answer by saying that it had a PO Box and a
8 bank account in Houston?

9 A You did.

10 Q And on the next page do you see that Mr. Kelly asked
11 where the Scintilla bank account was located?

12 A I see that.

13 Q And how did I respond?

14 THE COURT: If all we're going to do is go back and
15 forth, if somebody can point me during the break on this.

16 The document says what it says.

17 THE WITNESS: I --

18 THE COURT: Now, Mr. Meghji, I can read it, too, so
19 I just want to make sure that you're getting asked
20 questions -- you don't need to answer questions about a back
21 and forth between Mr. Kelly and Ms. Reckler, I can read it.

22 THE WITNESS: Thank you.

23 BY MS. RECKLER:

24 Q Mr. Meghji, was Mr. Duran from the United States
25 Trustee's Office present for all of these questions when they

1 were asked?

2 A Yes, I believe so.

3 Q And during this meeting is it fair to say that people
4 asked about the PO Box?

5 A It was obviously discussed at the 341 Meeting.

6 Q Did anyone ask when the PO Box was opened?

7 A Not to my recollection.

8 Q And had that question been asked, how would you have
9 answered?

10 A I would have checked and -- if I'd known the answer, I
11 would have given it. If I didn't, I would have checked and
12 got back to them.

13 Q If the US Trustee had follow-up questions about the
14 timing of the opening of the Post Office Box after the 341
15 Meeting, would the Debtors have answered truthfully and fully?

16 A Of course.

17 MS. RECKLER: Let's turn to the third session of the
18 341 Meeting.

19 Can we pull up Exhibit 12?

20 BY MS. RECKLER:

21 Q Did the US Trustee ask any follow-up questions at this
22 meeting regarding Scintilla's PO Box?

23 A Not to my knowledge.

24 Q Did it ask questions about Scintilla's bank account,
25 operations, assets or principal place of business?

1 A Again, not to my knowledge.

2 Q Had the US Trustee done so how would you have answered?

3 A Like every other question we had, we would have done our
4 best to answer them promptly.

5 Q Are you aware of any unanswered questions or inquiries
6 from the United States Trustee's Office related to anything in
7 this case?

8 A I don't believe so.

9 Q Would you have provided answers if there were unanswered
10 questions or inquiries?

11 A To the best of our ability.

12 Q To your knowledge has the United States Trustee ever
13 complained to you or to the Court that the Debtors haven't
14 been forthcoming?

15 MS. THOMAS: Objection --

16 THE WITNESS: Again, not to my knowledge --

17 THE COURT: Hold on second. Hold on a second.
18 Wait, wait, Mr. Meghji. What's the objection?

19 MS. THOMAS: I think just some clarification in the
20 complaint.

21 THE COURT: Yeah, I agree. Sustained.

22 BY MS. RECKLER:

23 Q Had the United States Trustee ever filed anything with
24 the Court requesting information from the Debtors?

25 A Not to my knowledge. I think we provided everything they

1 needed directly without having a court filing.

2 Q Mr. Meghji, where are the professionals for the key
3 constituents in this case located?

4 A All over, all over the country, New York, Chicago,
5 California, so I think the professionals are located all over
6 the country.

7 Q In your opinion would it be more convenient for the key
8 constituents to transfer this case to Delaware?

9 A No, I don't think so.

10 Q In your opinion would it be more convenient for the key
11 constituents to transfer this case to any other court?

12 A I don't believe so.

13 Q Mr. Meghji, was it your prior testimony that this case
14 has been complicated?

15 A Incredibly.

16 Q How so?

17 A Well, given the nature -- to start with, the nature of
18 the assets, which are early stage biopharma programs, you
19 know, a very difficult capital market environment for
20 biopharma companies over the past two to three years after the
21 capital markets collapsed.

22 With this background and the complexity of these assets
23 being very early stage assets made it in some ways very
24 difficult in terms of assets to monetize against and deal
25 with.

1 There was an incredible amount of litigation at the
2 outset of the case from the Nant parties, so that was another
3 complexity. There were dividend shares that have been
4 dividend -- dividend out to shareholders within a very short
5 period of time prior to filing for bankruptcy, so -- and the
6 sale process itself was protracted and complicated.

7 Q Mr. Meghji, have there been issues that are unique to
8 this case based on your experience as a restructuring
9 professional?

10 A Yes, you know, the dividend shares, the dividend of
11 equity shares is something I have not encountered before, and
12 then as I explained, and I will repeat it, the capital market
13 environment combined with the nature of these assets was also
14 pretty unusual.

15 Q And, Mr. Meghji --

16 A And -- I'm sorry, one other factor, this company, due to
17 the nature of its operations, had no remedies, so every -- its
18 survival potentially depended on our ability to continue to
19 raise financing. The company had raised \$460 million in the
20 14 months prior to bankruptcy through the equity markets, used
21 up almost all of it. But raising financing for a company with
22 all those hard assets in Chapter 11 is particularly difficult.

23 Q Mr. Meghji, you mentioned the Scilex dividend shares.
24 Are you aware that in this case working with the Creditors
25 Committee there was a lock up of those shares pursuant to an

1 order of this Court?

2 MS. THOMAS: Objection --

3 THE WITNESS: Yes.

4 MS. THOMAS: -- I'm not sure it's really relevant
5 where we're going.

6 THE COURT: Yeah, that's a good point.

7 Ms. Reckler?

8 MS. RECKLER: Your Honor, there is a pending motion,
9 and I was going to ask Mr. Meghji about it, but it's set to be
10 heard at the end of the month. It's a further lock up, an
11 extension of the lock up that's already in place. So that is
12 a matter that is on the docket that will have to be
13 adjudicated here by this Court or some other court.

14 THE COURT: I think you can discuss it generally,
15 but I don't want you getting into the specifics. That there's
16 a pending matter set, I think it says what it says.

17 MS. RECKLER: No, but it's that it's a pending
18 matter related to prior motions adjudicated by this Court.

19 THE COURT: I think you can ask general questions
20 about that, but nothing more, nothing specifically about the
21 merits or what's going on with it.

22 MS. RECKLER: No, no, I don't intend to, Your Honor.

23 BY MS. RECKLER:

24 Q Mr. Meghji, are you aware that the Creditors Committee
25 motion to extend the lock up on the dividend -- the Scilex

1 shares is scheduled for a hearing at the end of this month?

2 A Yes.

3 Q Do you anticipate needing further Court involvement with
4 respect to the sale and to the Plan?

5 A I do.

6 Q And is that because you would need to come back to Court
7 if an NOL transaction emerges?

8 A Correct, or if there are any complexities or issues arise
9 anticipating Court approval, which was last Friday, and the
10 closing of the sale.

11 Q And, Mr. Meghji, are you aware that final fee
12 applications will be filed by the state professionals in this
13 case and the Court will be asked to approve them based on the
14 activities in this case?

15 A Yes.

16 Q Is it fair to say that various parties have reserved
17 their right with respect to the interim fee statements filed
18 by certain of the professionals?

19 A Correct.

20 Q Mr. Meghji, are you aware that there's a Rule 60(b)
21 motion pending with respect to Jackson Walker before this
22 Court?

23 A I am.

24 MS. THOMAS: Your Honor, I have an objection as to
25 the relevance as to Jackson Walker.

1 THE COURT: Well, I think it -- overruled. I think
2 that --

3 THE WITNESS: And there is no pending 60(b) motion,
4 it's in Judge Rodriguez's Court.

5 MS. RECKLER: My understanding was that the
6 discovery matters were pending before Judge Rodriguez and that
7 the actual motion remained with this Court.

8 THE COURT: The document will say what it says.

9 MR. CULBERSON: That's news to me.

10 MS. RECKLER: I'm sorry, who was speaking?

11 THE COURT: That was Mr. Meghji. I think that said,
12 "That's news to me." No, that was Mr. --

13 (Several speaking at the same time.)

14 MR. CULBERSON: So, that was me, sorry, Tim
15 Culberson. That was Mr. Culberson on the motion.

16 THE COURT: The order says what it says, and it will
17 say what it says. And that -- but that's not -- it says what
18 it says. I signed an order and it says what it says. I don't
19 think we need to ask Mr. Meghji about that. I'm well aware
20 what my orders say.

21 MS. RECKLER: Understood, Your Honor.

22 THE COURT: No, no, understood. But just for the
23 purposes of clarity.

24 Mr. Culberson, I'd ask that you please refrain from
25 asking questions while the witness is testifying.

1 Let's continue.

2 THE WITNESS: And, sorry, Your Honor, I wouldn't
3 speak, that wasn't me.

4 THE COURT: No, no, no, we were clarifying.

5 THE WITNESS: Thank you.

6 THE COURT: You're going to get a fresh new question
7 and you can give an answer.

8 BY MS. RECKLER:

9 Q Mr. Meghji, I only have a handful of questions. Are you
10 aware that the Equity Committee filed a 2004 motion seeking
11 discovery from Latham & Watkins and M3?

12 A Yes.

13 Q And are you aware that that motion was denied by this
14 Court?

15 A Correct.

16 Q And did the Equity Committee appeal that order as to
17 Latham & Watkins?

18 A Yes.

19 Q And that appeal is pending before Judge Rosenthal?

20 A Correct.

21 Q And did you authorize your counsel to provide a
22 three-week extension to the Equity Committee to file their
23 opening brief?

24 A I have, I did.

25 Q And has that brief been filed as of today?

1 A Not to my knowledge.

2 Q So it's fair to say that the appeal is in the very early
3 stages. Correct?

4 A It makes sense.

5 Q And is it possible that if the appeal is not dismissed,
6 that it could be remanded back to the Bankruptcy Court?

7 A That's my understanding.

8 MS. RECKLER: Thank you, Mr. Meghji. That's all I
9 have.

10 THE COURT: Any further questions?

11 REDIRECT EXAMINATION

12 MS. THOMAS: If we could please turn to the
13 Voluntary Petition again? It's Exhibit -- the US Trustee's.

14 (Pause in the proceedings.)

15 THE COURT: Oh, wait. I need my --

16 MS. THOMAS: Thank you, Your Honor.

17 (Pause in the proceedings.)

18 THE COURT: There you are.

19 BY MS. THOMAS:

20 Q Mr. Meghji, do you recall just a few moments ago
21 Ms. Reckler was asking you questions in regards to Question
22 Number 4 on the Voluntary Petition for Scintilla? Do you
23 recall this question --

24 A Yes.

25 Q Thank you.

1 MS. THOMAS: If you can scroll down so he can see
2 that question?

3 BY MS. THOMAS:

4 Q And she asked you if you knew that if you sent -- and all
5 you did was address it to 7 Switchbud Place at Suite 192-513
6 that you wouldn't have to list the Post Office Box to get mail
7 there. Do you recall that question?

8 A Yes.

9 Q Okay. And you answered, "Yes." Right?

10 A Correct.

11 Q Okay. What was the basis of your knowledge of that fact?

12 A Just having read the frequently asked questions from the
13 UPS website which I looked at over the weekend.

14 Q Okay. So you didn't know that until you looked at it
15 this weekend which was, what, March -- I've lost track of
16 days -- March 10th, 2024?

17 A Yes. I had not looked at that website before this past
18 weekend.

19 Q So is it fair to say that when you testified at the
20 341 Meeting you didn't know that if you sent email -- or,
21 excuse me, you didn't know that if you sent mail with just
22 simply the suite number that the mail would get there?

23 A I think that's right, because I looked at all of it over
24 this past weekend.

25 Q Okay. Again, here do you see on the right-hand side

1 where it says, "Location of principal assets, if different
2 from the principal place of business." Do you see that?

3 A I do.

4 Q And it's blank. Right?

5 A Clearly.

6 Q Thank you.

7 MS. THOMAS: If you can go to the 341 testimony,
8 please?

9 BY MS. THOMAS:

10 Q So Ms. Reckler was asking you some questions about the
11 location of the books and records. Do you recall --

12 MS. THOMAS: If we can go to Page 24, please. If
13 you can see that?

14 BY MS. THOMAS:

15 Q Do you see at Line 21 where Mr. Kelly asked you where
16 Scintilla's books and records were located?

17 A Yes.

18 Q And what was your answer?

19 A I said, "Let us confirm it and come back to you on that."

20 Q Why did you answer that way instead of telling them where
21 the books and records were maintained?

22 A In just going by recollection, I think the fact that
23 these two addresses had come up and I sort of learned about
24 that during the course of the 341 Meeting, I was probably a
25 little bit unsure of exactly where the books and records were.

1 I think earlier, I guess if you go back up, I think I answered
2 the question of where the company's headquarters are, or to
3 say that it was at 4955 Directors Place.

4 Q Sure. And --

5 A So this was -- let me -- can I finish? So it was
6 simply -- there was probably a little bit of pictures in my
7 mind and I thought rather than addressing his question, I
8 would confirm exactly.

9 Q Did you ever actually get back to Mr. Kelly?

10 A I believe that my counsel did. I did not call him
11 personally.

12 Q So you have no personal knowledge that Mr. Kelly was ever
13 given that information. Correct?

14 A Well, I had asked our counsel to circle back to him on
15 any open questions.

16 Q But you don't know if that actually happened. Right?

17 A I don't.

18 Q Thank you.

19 Mr. Meghji, when did you know that the Post Office Box at
20 7 Switchbud Place was opened the day before the filing?

21 A I don't -- I don't know exactly when I knew that.

22 Q Did you know it --

23 A I cannot recall that today.

24 Q So the US Trustee filed this motion February of 2024, did
25 you know it in February 2024 before our motion was filed?

1 A Yes.

2 Q Did you know that fact in December of 2023?

3 A Sorry, let me just answer it this way, which is I
4 certainly knew about it -- I think I've already testified to
5 this -- at or -- at the 341 -- during the 341 Meeting and
6 afterwards. But I might have known about it before then, I
7 just don't recall knowing about it before the -- let me
8 finish -- before the 341 Meeting.

9 Q Well, I want to be really clear about what I'm asking
10 you, Mr. Meghji. I'm not asking when you knew about
11 7 Switchbud Place being a UPS Store. I want to know when did
12 you know what -- so we've heard that the Post Office Box, I
13 don't this is a disputed fact, the Post Office Box was opened
14 the day before the case was filed by counsel.

15 When did you know that that event occurred?

16 A I just don't -- I don't recall. I think early in the
17 case I had asked the question of counsel of where are we
18 filing. And I was told the Southern District of Texas
19 because -- I don't recall sort of engaging in a long
20 discussion of that. You know, my focus has been around
21 understanding the operations of the company, hoping, you know,
22 to sort of getting financing, and so all of this was
23 substantive issues in the case.

24 So it is possible that somebody had mentioned it to me, I
25 just couldn't -- I can't recall that.

1 Q So as you sit here today you don't know when you learned
2 the 7 Switchbud Place was -- I'm sorry, scratch that.

3 As you sit here today you don't know when you learned
4 that the PO Box was opened the day before filing. Correct?

5 MS. RECKLER: Your Honor, objection, asked and
6 answered.

7 THE COURT: He can answer. Overruled.

8 THE WITNESS: Yeah, sitting here today I can't
9 recall what the exact date of when it was.

10 (Pause in the proceedings.)

11 MS. THOMAS: Mr. Meghji, you -- this will be my last
12 question.

13 BY MS. THOMAS:

14 Q You testified that transfer to a different District would
15 be inconvenient for the parties. But I don't think I have a
16 good understanding why.

17 Can you tell me why it would be inconvenient to have your
18 motions and matters heard before another District Court?

19 A I don't believe I said anything about inconvenience. I
20 said that this Court and the Southern District of Texas is
21 fully up-to-speed with all of these issues, and my concern
22 simply is to ensure that the sale of -- that was approved on
23 Friday, is closed on a timely basis. And to the extent that
24 any changes to that or to the Plan or the -- you know, coming
25 to fruition of an allowable transaction would require guidance

1 or approval from the Court, it would make it potentially risky
2 and inefficient for another Court to timely get up-to-speed as
3 compared to this Court.

4 MS. THOMAS: I think that's all my questions. Thank
5 you.

6 THE COURT: Anything further?

7 (No audible response.)

8 THE COURT: Okay. Mr. Meghji, thank you very much
9 for your time.

10 THE WITNESS: Thank you.

11 (Witness steps down.)

12 THE COURT: Why don't we do a little housekeeping?

13 I have a hearing at 12:30 and a hearing at 1:00.
14 I'm going to start the 12:30 at 12:45 and I'm going to start
15 the 1:00 hopefully right around 1:00. I don't know on the
16 12:45.

17 Why don't we all come back here and continue this,
18 and the earliest I can do is 2:00 o'clock. I'm going to push
19 a 3:00 o'clock out.

20 Mr. Harris?

21 MR. HARRIS: Can we just close the evidentiary
22 record? The only thing we have remaining on the Debtors' side
23 is Exhibit 12 which is the transcript --

24 THE COURT: Well, maybe that's a better question.
25 In terms of -- I don't want to prejudice -- I guess what I'm

1 saying is we're going to have to come back at 2:00 o'clock to
2 discuss and I want to give everyone an opportunity to grab
3 lunch and to figure out -- what's left in terms of your case-
4 in-chief, in terms of witnesses?

5 MS. THOMAS: Absolutely. So as I mentioned at the
6 beginning the parties have stipulated to use Mr. Drew
7 Lockard's testimony --

8 MR. MEGHJI: Your Honor --

9 THE COURT: Hold on a second.

10 MR. MEGHJI: -- knowledge, not only if looking
11 at -- well, it details the fact that we're looking at the
12 pharmacy businesses are buying from a truck distributor --

13 THE COURT: Mr. Meghji, I can hear you.

14 MR. MEGHJI: And so -- (indiscernible).

15 (Conference unmuted / conference muted.)

16 THE COURT: Now I can't hear anyone and everybody --
17 can you talk -- I don't know if it was Mr. Meghji or
18 Mr. Culberson, if there's someone else. But --

19 MR. THOMAS: I don't.

20 THE COURT: -- I apologize. Yeah, I don't. Go
21 ahead.

22 MS. THOMAS: So the last two witnesses that we
23 intended to use their testimony today are Dr. Ji and
24 Mr. Lockard of Stretto. Both of them are unavailable today,
25 and so we were going to read portions of the deposition

1 transcripts into the Record, and I think it's really important
2 that the Court hear their testimony because there's important
3 parts that go to our case, so we have that piece left to do.

4 THE COURT: Can you tell -- I'm going to read it, I
5 don't want -- and it doesn't need to be read to the Court, but
6 you just have to point me to what it is that you want me to
7 read that the parties have stipulated to and I can -- I can do
8 that, and I won't rule until I read it. Which exhibit?

9 MS. THOMAS: Well, so Mr. -- Dr. Ji's testimony is
10 quite short, it's only 42 pages.

11 THE COURT: Okay.

12 MS. THOMAS: And I intended to use almost the
13 entire -- or portions on every single page frankly so --

14 THE COURT: Okay.

15 MS. THOMAS: -- I mean if you read the whole
16 transcript, that would get you what was necessary.
17 Mr. Lockard's, I certainly have -- it's only 36 pages,
18 37 pages I think, and I have just some very shorter portions
19 marked for that transcript.

20 THE COURT: Well, then why don't you stipulate to
21 what I'm supposed to read.

22 MR. HARRIS: Your Honor, we're fine having them
23 admitted in bulk. They're quite short --

24 THE COURT: Okay. Well, why don't I just -- what
25 are the exhibit numbers for those transcripts?

1 MS. THOMAS: They are --

2 THE COURT: Hold on --

3 MS. THOMAS: -- 25 and 27.

4 THE COURT: Oh, okay, that's 25 and 27.

5 MS. THOMAS: 25 and 27.

6 THE COURT: Oh, I'm sorry. Yes, yes, yes. Okay.

7 25 -- so we'll admit 25 and 27 in full, and I will read them
8 both.

9 (Exhibit Nos. 25 and 27 received in evidence.)

10 MS. THOMAS: Okay.

11 THE COURT: Okay.

12 MS. THOMAS: Okay.

13 THE COURT: And then what other witnesses do you
14 have?

15 MS. THOMAS: That is it for the presentation of
16 evidence, it would just be closing arguments and --

17 THE COURT: Okay. So I will then, in terms of
18 Movants here in terms of presentation of evidence I will
19 close -- not close the Record, but I will -- your side will --
20 the US Trustee going to rest?

21 MS. RECKLER: Yes.

22 THE COURT: Okay. Why don't we just take --
23 Go ahead.

24 MR. HARRIS: Judge, I can close also, I just wanted
25 to move in one more document, which was (indiscernible).

1 THE COURT: Are you presenting any evidence?

2 MR. HARRIS: Just the --

3 THE COURT: Just in terms of witnesses.

4 MR. HARRIS: No more witnesses, Your Honor, and only
5 one more exhibit that has not already been admitted.

6 THE COURT: What exhibit is that?

7 MR. HARRIS: Exhibit 12, which is the transcript of
8 the June 341 Meeting (indiscernible).

9 THE COURT: Oh. Any objection to the admission of
10 12?

11 MS. THOMAS: No, our original objection had been
12 that it was untimely, but I appreciate the Court's position
13 and it's our 341 Meeting, so I don't have an objection.

14 THE COURT: So 2005-12 is admitted.

15 (Exhibit No. 12 received in evidence.)

16 MR. HARRIS: I believe 1 through 16 --

17 THE COURT: No, I'm just adding that to the list
18 of --

19 MR. HARRIS: Yes.

20 THE COURT: -- for running.

21 MR. HARRIS: Correct.

22 THE COURT: Do you have any additional?

23 MR. HARRIS: No, we will not be moving in otherwise
24 17 or 18 and we have no more witnesses. That is our
25 evidentiary --

1 THE COURT: So why don't we do this, why don't we
2 come back at 2:30 p.m.? I will finish with my 12:45, 1:00
3 o'clock. Once the 1:00 o'clock is done I'm going to go back
4 and I'm going to read these transcripts carefully, and that
5 will give me 30 minutes before closing arguments, I should
6 read the transcripts.

7 I think that's the way I should do it. Okay?

8 MS. THOMAS: Thank you, Your Honor.

9 THE COURT: All right, folks. Thank you. So will
10 close the evidentiary record in other words, and then we will
11 proceed, I'll come back and read 25 and 27, and I will read
12 the 341 transcript, the recent one that was just admitted, and
13 then we will come back and we'll take closing arguments.

14 For the 12:30, let's do 12:50, and I got it, the
15 1:00 o'clock is going to get pushed. We're going to push --
16 I'm going to ask Ms. Saldaña to reach out to the folks who are
17 going to come in for the 3:00 p.m. and I'm going to ask them
18 to come back at 3:45 p.m. I'm going to give as much
19 opportunity to -- for closing arguments. Well, tell them
20 4:00, tell them to come back at 4:00 o'clock. I think it's
21 fair. Thank you.

22 MS. THOMAS: Thank you, Your Honor.

23 (Recess taken from 12:40 p.m. to 2:30 p.m.)

24 THE COURT: Okay, good afternoon, everyone. This is
25 Judge Lopez. Today is March 11th. I'm calling continuation

1 of the Sorrento case. It is now 2:30 p.m. I want to thank
2 the parties for their patience and the accommodations as I
3 worked with a couple of other matters.

4 Evidentiary record has closed. And we will proceed
5 to argument. First, if there is anyone who will be making
6 argument, I will allow it over the line, if you have filed a
7 pleading. I ask that you please hit five star before we get
8 started.

9 I ask that you please monitor yourself as I unmute
10 the line. I'm just going in order in which I see them.
11 There's a 213 number.

12 MR. SHINDERMAN: Your Honor, this is Mark Shinderman
13 for the Debtors.

14 THE COURT: Okay. There's an 832 number.

15 MR. CULBERSON: Hi, Your Honor, it's Tim Culberson.

16 THE COURT: Oh, good. Good afternoon.

17 There's a 607 number.

18 MS. LOVRIC: Good afternoon, Your Honor, Margaret
19 Lovric, Glenn Agre Bergman & Fuentes, on behalf of the SEC.

20 THE COURT: Okay. Good afternoon.

21 I've unmuted your line, just please go ahead and
22 just monitor yourselves. Please place your phones on mute and
23 we will proceed with closing arguments.

24 I will let the U.S. Trustee go first. And then I'll
25 turn to any comments from Mr. Culberson. I will then turn to

1 Debtors' counsel, then I'll turn to the Committee and then if
2 the Equity Committee wishes to speak, I'll let you go there,
3 in that order.

4 So we'll go the U.S. Trustee, Mr. Culberson,
5 Debtors, Unsecured Creditors Committee and then the Equity
6 Committee, if you have any statements to make. We'll go in
7 that order and then we'll see where we are.

8 Good afternoon, counsel.

9 MS. THOMAS: Good afternoon, Your Honor. Aubrey
10 Thomas, again, on behalf of the United States Trustee. Thank
11 you for the accommodation to continue this matter to the
12 afternoon.

13 CLOSING ARGUMENTS

14 BY MS. THOMAS: Let us start with the relevant
15 statute. Section 1408 provides four ways a Debtor can
16 establish venue. The first three require you to determine
17 where was the Debtors' domicile, principal place of business
18 or the location of principal assets during the greater part of
19 the 180-day period prior to the filing of the case.

20 The fourth method of the statute venue is under
21 subsection (2) of the statute, "If an affiliate has already
22 filed in that District, they then have venue to file a relief
23 affiliate case."

24 So importantly, we haven't spent much time talking
25 about Sorrento today. But Sorrento's Voluntary Petition,

1 which is at the U.S. Trustee's Exhibit 16, claims venue under
2 14, week two, relying on filing of Scintilla's Petition as the
3 basis for venue.

4 So as a practical matter, Sorrento can only claim
5 venue in the Southern District of Texas. Scintilla's venue
6 was properly established.

7 So turning to the facts regarding Scintilla.
8 There's no dispute that Scintilla's domicile was and continues
9 to be Delaware. The second option, the principal place of
10 business, is the focus of our evidentiary dispute today.

11 The evidence shows that Sorrento and it's
12 subsidiaries have always been headquartered in San Diego,
13 California.

14 Dr. Ji testified that he formed Scintilla many years
15 ago, but it is has been non-operational for years. From his
16 testimony, we know that Scintilla has had no operations and no
17 assets for 2022 and 2023 until it went ahead and opened a Post
18 Office Box.

19 The singular act that the Debtor asserts made the
20 Southern District of Texas the appropriate venue for the
21 principal place of business was the opening of a Post Office
22 Box at a UPS store in The Woodlands, Texas.

23 You heard testimony today that the CRO, Mr. Meghji,
24 was not involved in the decision to open the Post Office Box.
25 Nor did he even know that 7 Switchbud Place was a UPS store

1 until at the earliest the May 30th, 2023, 341 Meeting.
2 Similarly, Dr. Ji testified at his deposition that he was not
3 involved in the opening of the Post Office Box.

4 He doesn't know if Scintilla has ever received mail
5 there. And he admitted in his deposition testimony that he
6 never conducted any business at that Post Office Box.

7 The fact that he admitted that he didn't even know
8 that 7 Switchbud Place was a UPS store until, quote,
9 "recently." And he could not recall the first time he knew
10 Scintilla had a Post Office Box.

11 Exhibit 7 demonstrates that a lawyer for the Debtor
12 went to the UPS store and opened a PO Box on behalf of
13 Scintilla. This court should find that having a lawyer open a
14 Post Office Box is not business activity qualifying for a
15 principal place of business.

16 What this Court could potentially consider as
17 business activity was the Debtors' sole officer, Dr. Ji,
18 participating in legal meetings and making decisions to put
19 Scintilla into bankruptcy.

20 That activity occurred between February 9th and
21 February 12th, 2023. And there's no dispute that during that
22 time period Sorrento and it's subsidiaries were being directed
23 from headquarters in San Diego.

24 Let's turn to the law. The guiding opinion is *Hertz*
25 *versus Friend*, which 559 US Reporter 77. It's a 2010 case.

1 The Supreme Court concluded that the principal place of
2 business refers to the place where the corporation's
3 high-level officers direct control and coordinate the
4 corporation's activities. The nerve center. Under that
5 definition, Scintilla's principal place of business is
6 unquestionably San Diego.

7 The Debtor relies on *Harris v. Black Clawson*
8 *Company*, 56 or excuse me, 961 F2d 547, saying that the case
9 stands for the proposition that when you have an inactive
10 corporation, the last business activity determines the
11 principal place of business. And that's a misreading of the
12 case.

13 Theirs is a pre-curse case addressing how to
14 establish diversity jurisdiction when a corporation is no
15 longer operational. The entity at issue in that case was
16 incorporated in the State of New York. But when it was
17 operational, primarily did business in Louisiana.

18 The business ceased operations and years later was
19 sued in Louisiana. The Plaintiff sought to remand the lawsuit
20 to State Court due to lack of total diversity for purposes of
21 diversity jurisdiction.

22 In discussing the parties' argument, the Court held
23 that the place of incorporation is not necessarily the
24 principal place of business. It also rejected the argument
25 that an inactive corporation could not have a principal place

1 of business.

2 The Court opined that the last business activity of
3 a corporation would be relevant to the inquiry of the
4 principal place of business. And importantly is not case
5 determinative and they -- we quoted this in our reply brief.
6 But at 551 it says, "To adopt a rule the place of an inactive
7 corporation's last business activity is relevant to
8 determining its citizenship or subject matter jurisdiction
9 purposes, especially where that activity took place in its
10 last principal place of business is perfectly consistent with
11 the total activity test."

12 The rule that the place of an inactive corporation
13 last activity is always determinative of its citizenship for
14 diversity purposes, however, has the potential to produce the
15 odd results that an inactive corporation may be held at its
16 principal place of business in a jurisdiction in which it
17 would never have been held to have it's principal place of
18 business while it was active. Surely Congress cannot have an
19 intended to produce these results either.

20 Thus a wholesale adoption of the last activity test
21 would appear to be at odds with the total activity test.
22 Therefore, we hold that level place of inactive corporations
23 last business activity is relevant to determine it's principal
24 place of business. It is not dispositive.

25 So, there's a couple key take aways, I think, from

1 this case. First, is that as a pre-*Hertz* case, the Court
2 should not rely on *Harris* to reach a result that is
3 inconsistent with *Hertz*. What *Harris* actually looked at was
4 the last business activity before the business went inactive.

5 The company operated in Louisiana and it's last
6 business activity was in Louisiana and then it had a period of
7 inactivity. So it was that last business activity while
8 activity was occurring.

9 And last, finally, the last business activity is not
10 determinative of the principal place of business.

11 To follow the Debtors' argument would be to find
12 that an inactive, inoperable business does not have a
13 principal place of business. But that position was rejected
14 again out of Fifth Circuit in *Harris*.

15 So when looking at the greater part of the 180 days
16 prior to the Petition, we look at the principal place of
17 business for that entire time period. There is -- and this is
18 a little cheesy -- there isn't a scintilla of evidence that it
19 was in Texas.

20 Instead, all of the activities of Scintilla were
21 directed from San Diego.

22 So that leaves us with a final venue hook, the
23 location of the principal assets. As set forth in our brief,
24 there are two ways that the Court can determine the location
25 of the principal assets.

1 The majority viewpoint is that assets like phones
2 and a bank account that can be accessed anywhere are located
3 where the company's headquarters are, principal place of
4 business.

5 The Voluntary Petition appears to be designed to
6 have that assumption baked into the forum. The Debtor can
7 market its assets are not the same place as their principal
8 place of business.

9 As we went through this morning, Scintilla wrote
10 anything in that box from question four that their principal
11 assets were located anywhere other than their principal place
12 of business.

13 THE COURT: I want to make sure that I understand
14 what you're saying. You're saying that the majority view is
15 that principal assets are where the headquarters are?

16 MS. THOMAS: For intangible assets like money in a
17 bank account, right. So, the idea being if you have tractors,
18 obviously where that tractor is parked that's gonna be where
19 that asset is.

20 But for money in a bank account where you can access
21 it from pretty much anywhere in the world, I think the
22 majority viewpoint that we set out in our reply brief is that
23 it would be where the principal place of business is.

24 THE COURT: Where do you see that in the text?
25 You're relying on case law. Does the text say that?

1 MS. THOMAS: The text for (indiscernible)? It does
2 not address how to locate or how to determine where the
3 location of the principal assets are.

4 And we acknowledge that in our reply brief that this
5 where money in a bank account is, we don't believe that
6 there's a controlling case law. So that's why --

7 THE COURT: I'm asking what the text says.

8 MS. THOMAS: Sure, absolutely. It says where the
9 principal assets are located.

10 THE COURT: Got it. So there are cases that then
11 try to determine what that means?

12 MS. THOMAS: Absolutely. In terms of the bank
13 account. So the first would be tying the funds to wherever
14 the business is headquartered. Right?

15 The alternative amount --

16 THE COURT: But that's not where they're located,
17 right? Those cases say that, but that's not where they're
18 located, right?

19 In other words, these things have to mean different
20 things. Other than that, we're just combining the two. So,
21 State of incorporation domicile makes sense. Principal place
22 of business, you kind of got to figure out what is the
23 principal place of business.

24 But then principal place of assets, that's got to be
25 different than where the headquarters are. Other than that,

1 you don't -- there's three different -- there's got to be
2 three different ways to do it, if not, then we're just reading
3 one out of the text.

4 MS. THOMAS: Not necessarily. I mean, you could be
5 domiciled in Texas, have your principal assets here in Texas,
6 and have your principal place of business.

7 THE COURT: Right, but the State would be there, but
8 there are three different -- in other words, you wouldn't
9 combine -- you're exactly right. Someone could be domiciled
10 in Texas with the headquarters in Texas, but the assets would
11 be located in a State or in a Division within that State, as
12 opposed to just having domiciled in the State of Texas, for
13 example, or the State of New York or the State of California
14 or State of Delaware.

15 MS. THOMAS: And I think that the factual -- I
16 understand where you're coming from. And I think it arises
17 out of the fact that this Debtor only had the evidence that we
18 have is that it had \$60,000 in a bank account.

19 So that's the only asset that we're really dealing
20 with at this point in time is that money. So I agree that it
21 is a slightly strange result to necessarily say that it's --
22 well, the principal assets are where the principal place of
23 business is.

24 I don't think that's writing it out of the statute.
25 It's just simply applying the definition or the term for the

1 principal assets, how to determine where the bank account
2 money is located, applying that text.

3 And so a lot of Courts have applied principal place
4 of business is where we're going to say that those assets are
5 actually located.

6 The alternative approach is the Courts look to where
7 the funds are actually held, which branch of the bank. And we
8 spent a lot of time today establishing that. And I think that
9 despite counsel's intentions, the funds did not go to the
10 Houston branch of Signature bank.

11 THE COURT: How do we know that? Where's the
12 evidence to show that whether it did or didn't?

13 MS. THOMAS: Absolutely.

14 THE COURT: I'm going to ask the other side the same
15 question. But where's the evidence? Is it just pulling up
16 someone, you know, an auditor who's been on a case for a month
17 and a half? I mean, a week and a half, pulling -- doing a few
18 Google searches?

19 That's the evidence that I'm supposed to rely on as
20 to whether it went there or not? Tell me what shows whether
21 it did or it didn't.

22 I'm a little surprised that the actual auditor
23 didn't testify today. The person who actually worked the
24 case. I'm not saying they had to, but -- in other words,
25 somebody may or may have not done the research on it.

1 But what we had today was someone who is as honest
2 as can be showed up and said here's what I was asked to do and
3 I ran a few searches and I found a couple of things on Google
4 searches and it doesn't show it.

5 And I'm not saying it's your burden. What I am
6 saying is I don't know -- kind of I'm just hearing you out.
7 But where's the evidence that shows like -- there's a document
8 saying that it was transferred to a Houston -- there's a
9 Houston address or something, right?

10 And so how do we know whether it hit the bank
11 account or it didn't hit a bank account in Houston?

12 MS. THOMAS: That's an excellent question. So the
13 only evidence -- the only evidence we have today that it went
14 to Houston bank branch are wiring instructions.

15 THE COURT: And what refutes that? That's what I'm
16 saying.

17 MS. THOMAS: Well, importantly, we have no evidence
18 of who drafted those wiring instructions. You read the
19 testimony of Mr. Lockard during his deposition. Asked where
20 did these wiring instructions come from? His banking team.
21 Okay, where's your banking team get them from? I don't know.
22 Do you know who put in Houston as that address? I don't know.

23 I asked Dr. Ji: Dr. Ji, did you review these wiring
24 instructions? No. Did you verify these instructions? No.
25 We asked Mr. Meghji the exact same questions.

1 And we hit a point where -- and I'm not trying to
2 have this reflect negatively on the witnesses. I certainly
3 appreciate the need to assert attorney-client privilege. But
4 we were -- we couldn't get any additional facts that were not
5 coming from a lawyer because the lawyers, apparently, were the
6 ones who directed the opening of the account and they relied
7 upon wiring instructions.

8 So we had our wiring instructions. We have no idea
9 who wrote them, how the Debtor got them, and where the funds
10 went.

11 Now let's talk about the evidence we do have.
12 Routing numbers are standard numbers that are utilized in
13 banking. And Ms. Simmons testified that she investigated this
14 routing number. And that the routing number did not direct
15 funds to a bank in Houston.

16 We provided annual reports from 2021 and 2022 that
17 showed that Signature Bank did not have a branch for receiving
18 funds in Houston. We provided the FDIC documents that showed
19 the number of bank branches that were located in Houston -- or
20 sorry, in the country for Signature Bank. And none of those
21 40 branches were located in Houston.

22 And so, in some sense, I would love to walk into
23 Court with a definitive document or testimony from a witness
24 that says I'm the one who wrote these wiring instructions and
25 Signature Bank doesn't exist any more.

1 So we're left with putting together the documents we
2 do have. And there is nothing that shows that these wiring
3 instructions sent money to Houston. There's no evidence.
4 None. Except for the expression of counsel that that's what
5 they intended.

6 We have emails where they say we wanted a Houston
7 bank account. But even Mr. Lockard could not confirm that
8 these funds went to a Houston bank account. He could not
9 confirm that for us.

10 So if the Court is looking at this secondary test of
11 where the money went, and you heard testimony from Ms. Simmons
12 that she looked up the routing number and it didn't pull up a
13 Texas branch.

14 We reviewed all the FDIC documents. And there is no
15 dispute that counsel wanted a bank in Texas, but no one on the
16 Debtors' team -- not Mr. Meghji, Mr. Lockard and not even
17 Counsel -- had verified the routing number actually went to a
18 Houston bank branch.

19 The evidence today is that the only asset of the
20 Debtor was a \$60,000 wired to the Debtor shortly before the
21 bankruptcy was filed and that those funds were not held in
22 Texas.

23 This analysis leaves us with the conclusion,
24 supported by the evidence today, that venue is not proper in
25 the Southern District of Texas. And I respectfully request

1 that the Court find the venue is not proper.

2 So what is the remedy when venue is not proper? The
3 remedy is set forth in 1406(a) which provides that dismissal
4 or transfer are the only remedies. The interest of justice
5 inquiry determine whether transfer or dismissal is warranted
6 comes into play at that point.

7 We think that there is sufficient evidence on the
8 Record that transfer is in the interest of justice and that
9 dismissal would not benefit the Creditors.

10 I would note that there is no time limit for this
11 requirement under the statute. Instead, Rule 1014(a)(2)
12 provides that if a Petition is filed in the improper District,
13 the Court on a timely motion may dismiss the case or transfer
14 it to any other District if the Court determines that transfer
15 is in the interest of justice and for the convenience of the
16 parties.

17 So the rule tracks 1406(a) in that the inquiry into
18 the interest of justice and convenience of the parties as to
19 whether to dismiss or transfer. The advisory committee notes
20 from the 1987 amendments make it clear that there is no right
21 to retain an improperly venued case. So the remedy would be
22 transfer or dismissal.

23 The final issue that we spent a lot of time on today
24 is timeliness. Debtors argue that the Voluntary Petition and
25 the 341 testimony was sufficient to put the U.S. Trustee on

1 notice, that the 7 Switchbud Place was a Post Office Box at
2 the UPS store.

3 That is holding the U.S. Trustee to an incredibly
4 high standard that not even the Debtors' own representatives,
5 signed documents and testified under penalty of perjury could
6 meet.

7 Mr. Meghji testified today that he didn't know that
8 the address at 7 Switchbud Place was at the UPS store. And he
9 reviewed the Petition and Schedules before testifying at that
10 341 Meeting.

11 Dr. Ji equally, could not testify as to when he knew
12 the 7 Switchbud Place address was a UPS Store Post Office Box.
13 If the Petitions and Schedules and statements were
14 insufficient that the Debtors' own representatives on notice,
15 how would the U.S. Trustee be onto this?

16 There's a lot of evidence about when the U.S.
17 Trustee knew about the Signature Bank account. It is not
18 unusual for a Debtor to open a new bank account. Mr. Meghji,
19 himself, testified that what he cared about was that Signature
20 Bank was an authorized depository.

21 That was certainly the U.S. Trustee's focus as well.
22 But there's a more important reason the U.S. Bank -- the
23 Signature Bank, sorry, issue didn't come up until now.
24 Because based on the Petition, the U.S. Trustee had every
25 reason to believe that the venue was properly based on the

1 office space, a principal place of business, at 7 Switchbud
2 Place.

3 It had no reason to question if funds were located
4 in Texas until the Debtor raised the issue as a defense for a
5 motion to transfer venue. The Debtors' argument essentially
6 today is that the U.S. Trustee should have looked closer.

7 In preparing for today's hearing, I was reviewing an
8 opinion about Disclosure Statements. And I think it applies
9 with equal weight to this case. Because neither the Court,
10 nor Creditors or other parties-in-interest should be forced to
11 be detectives, clairvoyants or soothsayers to figure out
12 exactly what Counsel's arrangement is with his clients or
13 parties-in-interest in a bankruptcy case.

14 As one Court ample stated, coy and incomplete
15 disclosures which leave the Court to ferret out pertinent
16 information from other sources are not sufficient.

17 And that's *in re: Cialella* at 643 B.R. 789. And so
18 I think in -- and this is a disclosure issue for counsel's
19 relationship with their client.

20 But I think that that rings true equally important,
21 if not more so, for a Voluntary Petition that is signed under
22 penalty of perjury. And I would ask that the Court not set a
23 lower bar for those statements than we do for attorney
24 disclosures.

25 The U.S. Trustee should not have to be a soothsayer,

1 an investigator to understand when an attorney represents the
2 principal place of business on a 341 Meeting is located at a
3 particular address, to question whether or not that is
4 actually a principal place of business as that term is
5 commonly understood between lawyers. And that they should
6 investigate as to whether or not it's a Post Office Box.

7 I want to just review the final exhibits
8 (indiscernible) with you to make sure I covered all of the
9 exhibits that we discussed today.

10 (Pause in the proceeding.)

11 MS. THOMAS: Exhibit 4 we have as Signature Bank
12 statement which lists the address in San Diego, California.
13 As we listed in our reply brief that is one of the factors
14 we're looking at the principal place of business where they're
15 using their address on bank statements.

16 As we discussed already, Exhibit 6, the wiring
17 instructions. There is no evidence as to whether or not --
18 who created those wiring instructions. And I know there was
19 some statements earlier that they were given to them by
20 Signature Bank.

21 I think Mr. Lockard's testimony makes clear that
22 he's the one, Stretto, provided these wiring instructions.
23 That there's no Signature Bank employee involved in the
24 communicating of the wiring instructions to Debtors' counsel.

25 We have Exhibit 7 where the Post Office Box was

1 established by counsel approximately 12 hours before the case
2 was filed.

3 The Court, I know, reviewed Dr. Ji's testimony.
4 Exhibits 11 through 14 are essentially the State of
5 California's filings which list solely the San Diego address
6 and do not list any point in time the Texas address.

7 And unless the Court has any other questions, I
8 think that's it. Thank you, Your Honor.

9 THE COURT: Thank you very much for your time. I
10 did want to confirm that I did -- my 1:00 o'clock finished
11 with sufficient time. I was able to really carefully read all
12 of the depo transcripts. Thank you.

13 MS. THOMAS: Thank you, Your Honor.

14 (Pause in the proceeding.)

15 THE COURT: Oh, Mr. Culberson, you're -- do you wish
16 to make any statements, now is the time.

17 MR. CULBERSON: Thank you, Your Honor. I'll be
18 brief.

19 CLOSING ARGUMENTS

20 BY MR. CULBERSON: I fully commend Ms. Thomas and
21 her work and she's done a great job in presenting the law and
22 the facts in this case.

23 Just a couple of points that I think are important
24 to this analysis and I think this case is precedential. I
25 think that it's important to set the standard here when it

1 comes to what we know now, which is the lawyers for the
2 Debtors in this case, there's no question, manufactured venue
3 facts. And the time of these events is critical.

4 Fifty-seven hours before they filed the Petition,
5 this is after Mr. Meghji has admitted that he was retained as
6 the CRO, which means we are absolutely going forward with
7 bankruptcy. We know we're going to file bankruptcy. So,
8 guess what we're going to do? We're going to go ahead and
9 figure out a way to get this in the Southern District of
10 Texas.

11 We're going to basically render the venue statute
12 powerless because if this is allowed to go forward -- let's
13 assume that there was a bank account in Texas, which I don't
14 think the Debtors have proven that. I think it's their burden
15 to do that. That hasn't been shown here today.

16 And the fact -- even if it was an account in Texas,
17 they manufactured the venue facts for the sole purpose of
18 getting this case in the Southern District. That means that
19 any Debtor in the United States that wants to get into any
20 District they want to, they now have a battle plan.

21 They can simply set up a checking account in that
22 District, days, hours before they file the Petition and claim
23 that they have venue in that District.

24 That is not what this venue statute contemplates.
25 And it would render the venue statute and the purpose of the

1 venue statute basically pointless. And that never is the
2 intent of Congress when they pass a law.

3 And so, I believe that there is no question that
4 there is absolute manufacture of the PO Box in hours before
5 they filed the Petition. These venue facts came out of thin
6 air -- absolutely out of thin air.

7 This was a stagnant, stale, dormant company that had
8 no debt. They were not doing business, but they were used as
9 an anchor to get this case improperly into the Southern
10 District.

11 The second point I want to make and I think this is
12 great questioning on part of Ms. Thomas of Mr. Meghji. When
13 asked -- we heard from the lawyers, but the lawyers aren't
14 evidence.

15 We've heard a lot of broad generalities about what
16 they've done, what the problems have been, how complex this
17 case has been. But where's the evidence of what has really
18 occurred in this case, especially when we're talking about
19 justice and convenience of the parties to transfer this case
20 which should happen.

21 When Mr. Meghji was asked what's the reason why you
22 are saying that this is against fairness and in interest of
23 justice to transfer this case to the Southern District of
24 California or to Delaware? And all he said was, well, this is
25 very complex. You just have to take my word for it. It's my

1 judgment.

2 And I think this could possibly cause problems with
3 the sale deal. That there are risks that the sale may not go
4 through, which there's been no specifics as to what that
5 possibly could mean. And in fact, even if this case stays in
6 this Court, there's risk that the sale deal may fail.

7 So there's been no specific evidence raised to this
8 Court by Mr. Meghji to give any reason why that if this case
9 were transferred tomorrow to the Court in California or a
10 Court in Delaware that a competent District Federal Judge
11 cannot pick this case up and get on board with what's going on
12 quickly, and things can still proceed in the orderly fashion
13 that they are.

14 This is not impossible to do. And I don't believe
15 the burden has been met in establishing that there's an
16 inconvenience or injustice to the parties to do what's right,
17 to follow the law, and transfer venue.

18 And I thank you for your time, Your Honor.

19 THE COURT: Thank you very much.

20 Okay, from the Debtors.

21 (Pause in the proceeding.)

22 CLOSING ARGUMENTS

23 BY MS. RECKLER: Good afternoon, Your Honor.
24 Caroline Reckler, Latham and Watkins, on behalf of the
25 Debtors.

1 Your Honor, just to remind the Court -- and I think
2 there's been some discussion about it from Mr. Culberson and
3 Ms. Thomas, the Movants have the burden of proof today.

4 And Your Honor, I'm happy to cite to those cases. I
5 think they were in our paper, but I think it bears repeating.
6 It's 150 F3d 788, 792 the 7th Circuit Case from 1998 and 896
7 F2d, 1384, 2nd Circuit, 1990.

8 And again, Your Honor, the Movants have to win on
9 all three issues. First, that their motions are timely.
10 Second, that they knew it was improper here. And third, the
11 transfer is either in the interest of justice or for the
12 convenience of the parties.

13 And let's talk about timeliness first because it's
14 dispositive under Rule 1014(a) or 1014(b), which only allows
15 for dismissal or -- transfer or dismissal on a timely motion.

16 And even under Section 1406(b), on which the U.S.
17 Trustee provides, we believe that statute is inapplicable.
18 But even if it does apply, it provides that nothing in this
19 chapter shall impair the jurisdiction of a District Court of
20 any matter involving a party who does not interpose timely
21 sufficient objections to the venue.

22 Even the primary case on which the U.S. Trustee
23 relies in arguing that transfer or dismissal is mandatory
24 where venue is improper, *Thompson v Greenwood*, still refers
25 over and over to the fact that the question before the Court

1 there was whether the Court could retain a case file in an
2 improper venue over a timely objection.

3 Not an untimely one. And you can read about that in
4 Pages 420 to 422.

5 These cases have been pending for over a year. A
6 lot has happened in the year. The timeliness not only goes to
7 when parties learned of what they believe have only now
8 uncovered. But also what has transpired in the year that the
9 Debtors have been in bankruptcy.

10 The relevant facts were disclosed a year ago. And
11 in the meantime, significant events have transpired in these
12 cases, including multiple sales, four DIP financings, the
13 lockup of it's the Silex shares and the multiple extensions of
14 that lockup.

15 There is currently further extension pending. And
16 even if they hadn't been, stakeholders who questioned the
17 Debtors' venue selection had ample opportunity to inquire, and
18 in fact, did so.

19 Let's walk through the relevant history. On
20 Exhibit 3, on the very first day of the case, February 13th,
21 2023, the Debtors noted on the face of the Petition that their
22 principal place of business was PO Box 513 at 7 Switchbud
23 Place, Suite 192-513.

24 Next to that, the Debtors noted their mailing
25 address was 4955 Directors Place in San Diego. Had the

1 Debtors wanted to obfuscate the truth, they simply could have
2 listed The Woodlands address, 7 Switchbud Place, Suite 192-513
3 on the Petition and eliminated the reference to the PO Box.

4 513 is the mailbox number as is clear from the next
5 line that says PO Box. Had they omitted the words PO Box it
6 would have appeared as though the Debtors had a physical
7 presence, such as an office in The Woodlands beyond a small
8 mailbox. Any mail would have been delivered all the same.

9 Your Honor, we're hearing for the first time in
10 closing that the U.S. Trustee thought that address was more
11 than a PO Box, that it was a lease or an office or something
12 else. We did not hear evidence of that fact.

13 Next, like all other Debtors, we participated in
14 initial Debtor interview with the United States Trustee on
15 March 7th. Part of the IDI, the Debtors with the assistance
16 of M3 answered questions for the United States Trustee and
17 provided information such as bank account information in
18 advance of that meeting.

19 The U.S. Trustee could have asked any further
20 questions it wanted about the PO Box, Scintilla's activities
21 in Houston, The Woodlands, or the bank account including the
22 timing of all of that.

23 And immediately thereafter, as Your Honor likely
24 recalls, in early March of 2023, Signature Bank failed. Not
25 surprisingly there was a flurry of activity, communications

1 with the United States Trustee about replacing that account.

2 If we look at Debtors' Exhibit 13 and the United
3 States Trustee's Exhibit 4, this will show that on March 12th,
4 the Debtors sent the U.S. Trustee Scintilla's February bank
5 statement, which showed very clearly that it was opened on
6 February 10th and that \$60,000 in it by February 12th, the day
7 before the filing.

8 On February 10th, it showed it had zero dollars. It
9 also shows that the \$60,000 was transferred by Sorrento.
10 That's a year ago, tomorrow. The U.S. Trustee had all of the
11 facts about the opening of the Signature account, including
12 this timing.

13 And then on March 30th, 2023, the U.S. Trustee
14 conducted the 341 Meeting where both the PO Box and the bank
15 account were explicitly discussed. And to the extent that
16 anyone had questions, they could have been further raised.

17 Mr. Kelly, counsel to the Debtors' largest creditor
18 of the time then, asked the Debtors' representatives questions
19 of the 341 Meeting that were clearly designed to gather
20 information about the Debtors' choice of venue.

21 I personally corrected Mr. Kelly on the Record and
22 noted that the Debtors' principal place of business was a
23 PO Box. And pointed to question four on the Petition.

24 The Debtors provided information and answered all of
25 the questions that were asked that day and they answered them

1 truthfully. Had anyone, including the United States Trustee,
2 asked when the mailbox was obtained, we would have answered
3 truthfully.

4 Mr. Meghji testified to that and that is not
5 controverted. There were no follow-up questions on any topic,
6 including bank accounts at issue, the mailbox or anything else
7 that went unanswered following the final meeting of the 341 in
8 June. Mr. Meghji also testified to that.

9 The Debtors' Schedules and Statements at Exhibits 8
10 and 9 further disclose the bank account and the transfer of
11 \$60,000 from Sorrento to Scintilla to fund the account on
12 February 10th.

13 Again, all of this information had already been
14 provided to the United States Trustee when the Debtor sent the
15 February bank statement.

16 The Debtors also understand that in the spring of
17 2023, the Unsecured Creditors Committee with knowledge of all
18 the relevant facts based on the Debtors' various filings and
19 at the 341 Meeting in conversations with the Debtors' counsel
20 evaluated the Debtors' venue and ultimately determined not to
21 challenge that.

22 Mr. Shinderman spoke to that earlier and it's in his
23 papers. Mr. Shinderman and his Committee evaluated the facts,
24 the circumstances of the case, and declined to file a motion
25 seeking to transfer venue. Similarly the Equity Committee

1 never sought transfer of venue.

2 There has never been an attempt to hide the
3 existence of the PO Box or when the PO Box and bank account
4 were created or why they were created.

5 Had the Debtors been asked by the United States
6 Trustee or anyone else, the Debtors simply would have answered
7 with the truth. We created venue.

8 In hindsight, I wish someone had asked this question
9 last spring because we would have squarely addressed it and
10 truthfully addressed it back then before these cases had
11 developed.

12 In fact, the only fact that the United States
13 Trustee focuses on that wasn't disclosed months or years ago
14 is when the PO Box was opened. But that fact is irrelevant to
15 the U.S. Trustee's position.

16 If it had been opened a year ago, under their legal
17 framework, the venue would be just as allegedly improper.

18 While much of my argument has been specific to the
19 United States Trustee, it applies all the same to
20 Mr. Culberson. He has been an active participant in these
21 cases as early as his notice of appearance in August of '23,
22 if not earlier.

23 Again, the face of the Petition clearly lists the
24 PO Box as Scintilla's principal place of business. It is so
25 clear that Mr. Culberson was even able to visit it.

1 The Movant's arguments that they only recently came
2 into information that put them on notice of their potential
3 venue objection should fall on deaf ears and the Court should
4 find that those objections are untimely and should be deemed
5 waived.

6 Paragraph 20 of our objection details the cases
7 where Courts are overwhelmingly clear that venue can be waived
8 if it is not timely challenged. I will not repeat those cases
9 now.

10 Federal Rule of Bankruptcy Procedure 1014 Advisor
11 Committee Notes also say that if a timely motion to dismiss
12 for improper venue is not filed, the right to object to venue
13 is waived.

14 And even if 28 USC 1406 applies to bankruptcy cases,
15 1406(b) still provides that a motion must be timely. The
16 Court does not need to go further to determine whether a venue
17 is proper. But if the Court does reach that question, the
18 evidence will show that it is.

19 As a threshold matter, because Scintilla filed in
20 the Southern District of Texas, venue is presumed proper here
21 and as I noted earlier the Movants bear the burden of proof.

22 They must prove by a preponderance of evidence that
23 the case was improperly venued. The objectors argue that the
24 proximity of time between the establishment of the mailbox and
25 the bank account and the filing means that Scintilla's choice

1 of venue didn't satisfy Section 1408 of Title 28 because it
2 did not have a principal place of business or principal assets
3 for a longer portion 180-day period preceding filing that it
4 had a principal place of business, principal assets in another
5 Federal District.

6 This argument fails. Here both Scintilla's
7 principal place of business and principal assets were located
8 in the Southern District for the longer portion of that
9 period.

10 I will rest on our papers with respect to the
11 principal place of business argument. But I would like to
12 touch on the principal assets on Section 1408.

13 The Movants haven't provided any compelling rebuttal
14 to the notion that Scintilla's principal assets were in the
15 Southern District for a longer portion of 180-day period than
16 it was in any other District.

17 Neither Movant has argued that Scintilla had any
18 assets outside the Southern District of Texas during the
19 180-day period other than the U.S. Trustee's arguments that
20 the Signature Bank account is not, in fact, located in Texas.

21 But the law and the evidence don't support the U.S.
22 Trustee's argument. It also ignores the existence of the
23 PO Box. I don't think anyone today has disputed and the
24 evidence is uncontroverted that that PO Box is, indeed,
25 located in The Woodlands.

1 If you look at Exhibit 1 of the Debtors' exhibit,
2 this shows the instructions sent by Debtor counsel to Stretto
3 to open a PO Box in Houston. If you look at Exhibit 2,
4 Signature then sent the Debtors funding instructions for the
5 account, which identified the relevant local office of the
6 bank as being located at 9 Greenway Plaza in Houston.

7 It's not clear if the U.S. Trustee is somehow
8 suggesting that Exhibit 2 is not from Signature Bank. But the
9 document is in evidence without objection. It says at the
10 top, Scintilla. It has -- excuse me.

11 It says at the top, Signature. It has the Signature
12 logo as you can see by comparing it with the annual report,
13 which are United States Trustee's Exhibits 19 and 28.

14 This is not a credible argument. As to Mr. Lockard
15 and what he did or didn't know or what he was or was not
16 allowed to testify to, I want to be clear. Mr. Lockard is a
17 Stretto employee. He's not an employee of the Debtors. The
18 Debtors did not defend that deposition and the Debtors
19 certainly didn't claim any privilege.

20 Mr. Lockard testified that he was the relationship
21 person at Stretto. He was not in charge of the banking
22 operations at Stretto. And he deferred to his colleagues. He
23 simply wasn't the right person to ask questions about wire
24 instructions and bank accounts.

25 His testimony was not evasive. He answered

1 truthfully. He just wasn't the right person the U.S. Trustee
2 was asking those questions.

3 In response, U.S. Trustee offers various documents
4 which it interprets to suggest that the Houston office must
5 have been merely a representative office. But none of those
6 documents say that the Houston office can't accept deposits or
7 can't serve as the local office for a bank account.

8 The U.S. Trustee's witness, Ms. Simmons, admitted
9 that. The only Signature document that addresses whether the
10 Houston office can serve as the local office is the bank
11 wiring instructions, which says Houston's local office.

12 So what they are raising is that most an
13 inconsistency between what Signature told the Debtors and what
14 the U.S. Trustee believes Signature's locations were. But the
15 U.S. Trustee didn't contact Signature or its successor to find
16 out what Signature's policies were, how to interpret -- how it
17 interpreted New York regulations.

18 And the U.S. Trustee didn't contact the New York
19 superintendent to find out how the Houston office is
20 registered and what communications there were about it. The
21 only entity that can answer why Signature identified the
22 Houston office as the local office, whether the Houston office
23 can handle the checking account would be Signature.

24 And in the Debtors' opinion, it indicated that it
25 could. There is a way to answer this. Ask Signature Bank or

1 whoever worked at Signature Bank at the time had provided the
2 wiring instructions.

3 That has not happened. And the U.S. Trustee chose
4 not to call a Signature Bank representative or someone who
5 used to work there to explain.

6 We're left with Signature saying the account was
7 affiliated with the Houston office and the U.S. Trustee
8 offering secondary evidence to suggest that its interpretation
9 of New York regulations. That is not enough to carry the U.S.
10 Trustee's burden.

11 Moreover, setting the bank aside completely, no
12 Movant has asserted that Scintilla's only other asset, the UPS
13 mailbox, was located outside of the District, nor could they
14 given the location of UPS store in The Woodlands.

15 In sum, Scintilla's only asset during the 180-day
16 period were located in Texas at all times. The Movant might
17 attempt to characterize those assets as *de minimis*, but they
18 were the only assets that Scintilla had. As a result,
19 Scintilla was well within its rights to seek bankruptcy
20 protection in this venue under the principal assets of Section
21 1408.

22 Your Honor, we think, again, this ends the analysis.
23 The Movants' motions are untimely and in any event, they have
24 failed to meet their burden to prove that venue was improper.
25 Therefore, the Movants' request to transfer based on improper

1 venue should be denied.

2 But even if that were not the case, this transfer or
3 dismissal of these cases would not be mandatory under 1406(a).
4 And I now want to turn to argument advanced by the U.S.
5 Trustee on this point.

6 In the Debtors' view, the relevant legal framework
7 applicable to venue transfer motions, Section 1412 of
8 Title 28, which by its own words specifically applies to
9 bankruptcy cases. You can read that in the text.

10 And it allows, but does not require, District Courts
11 to transfer bankruptcy cases to another District in the
12 interest of justice or for the convenience of the party.

13 And Bankruptcy Rule 1014, which permits transfers on
14 the same grounds. Notably subsection (82) of Rule 1014
15 specifically applies to cases filed in an improper District.
16 The plain language of that subsection makes clear that the
17 Court retains discretion. It uses the word "may," instead of
18 the word "shall."

19 And that distinction has been made in other rules
20 such as Rule 2007(c), to decide whether to transfer or retain
21 the case. The fact that the case is filed in an improper
22 District doesn't even affect the applicable procedure under
23 relevant considerations.

24 Under each of the subsections of (a)(1) governing
25 cases filed in a proper District, and (a)(2) the rule

1 governing cases where venue is not proper, they allow the
2 Court to transfer the case, quote, "on a timely motion of a
3 party-in-interest or on its own motion" and, quote, "After
4 hearing and notice of Petitioners" provides that the Court
5 "may," not "shall," transfer venue for where the case is filed
6 in an improper District dismiss the case.

7 And states that the relevant considerations in
8 deciding whether to transfer or dismiss are, quote, "In the
9 interest of justice and convenience of the parties, consistent
10 with Section 1412 of Title 28."

11 The text of subsections (a)(1) and (a)(2) is
12 virtually identical. The only substantive difference is in a
13 case filed in an improper District, the Court has the option
14 of dismissing the case rather than transferring it.

15 Despite the fact that the U.S. Trustee original
16 motion was styled as a motion to transfer or dismiss under
17 Rule 1014(a)(2), which again clearly preserves the Court's
18 discretion to decide whether or not to transfer or dismiss a
19 case even when filed in an improper venue.

20 The U.S. Trustee is arguing here that it's actually
21 Section 1406(a) of Title 28 that governs and deprives the
22 Court of the discretion to retain cases filed in an improper
23 venue.

24 With that Section title, quote, "pure or waiver of
25 effects" does not on its face apply to bankruptcy cases as

1 opposed to general, civil litigation in Federal Courts, unlike
2 Section 1412 of Title 28 which specifically in the text seeks
3 the cases filed under Title 11.

4 And while some Courts outside of Fifth Circuit have
5 held that it does, that view is not universal. And at least
6 one case from the Western District of Texas, *In re Lazaro*
7 (phonetic), as expressly held to the contrary.

8 There Judge Clark concluded that Congress intended
9 in Title 28 to create special rules for venue of bankruptcy
10 cases, quote, "Distinct from general venue rules applied in
11 general civil litigation filed in Federal Courts." End quote.

12 The Court went on to explain why. And here's what
13 Judge Clark said. He said, "Congress seems to have recognized
14 that venue considerations in bankruptcy cases are decidedly
15 different from venue issues in general and civil litigations.
16 And the Hallmark for venue issues in Title 11 cases, should be
17 maximum flexibility. Leaving to the Court the ability to move
18 or not move bankruptcy cases depending -- in the words of the
19 statute -- on the interest of justice and the convenience of
20 the parties."

21 We agree whole heartedly with that, Your Honor.
22 This case demonstrates precisely why that flexibility is so
23 important. If transfer or dismissal were mandatory, this
24 Court would have no choice to impose further delay and
25 additional expense at an estate that simply can't afford

1 either.

2 Your Honor, whether or not you believe venue was is
3 properly established in this District -- and we think it
4 was -- the decision to transfer or dismiss is ultimately yours
5 to make given the discretionary nature of Rule 1014(a) or (b)
6 taking into account the interest of justice and the means of
7 the party.

8 And neither of those factors weighs in favor or
9 transfer or dismissal here particularly in this stage of the
10 case. Both of those considerations are addressed in our
11 objection and I don't have much more to say about the means of
12 the parties in a case with constituents and advisors all over
13 the country.

14 Houston is a geographically central forum that is
15 largely equally convenient or inconvenient for all parties.
16 There is simply no reason to believe another forum would be
17 more convenient for the bulk of the parties in this case.

18 I do, however, want to spend a bit more time on the
19 interest of justice prong. In applying it, Courts focus on
20 objectives like efficiency, judicial economy, timeliness and
21 fairness. None of these factors favor a transfer of venue
22 now.

23 I won't repeat what's in our objection, but there
24 have been over a year's worth of significant development in
25 these cases and as Your Honor knows first hand, it would take

1 new judge considerable time and effort to get up-to-speed to
2 administer what remains to be done in these cases, some of
3 which, admittedly, do not require Court involvement unless
4 there are disputes.

5 For example, there maybe disputes in connection with
6 the consummation of the sale. This could include what to do
7 with the buyer's assets that you heard about on Friday,
8 whether not it should remain with the estate in connection
9 with an NOL transaction or not.

10 The Debtors may need to seek further approval to
11 Plan amendments or modifications if there's a transaction
12 involving the Debtors' NOLs.

13 The UCC has a pending motion at Docket 1962 to
14 further extend the lock up of the Silex shares, which is set
15 for a hearing at the end of the month. This is a further
16 extension of three prior extensions granted by the Court at
17 Docket Nos. 524, 1237, 1316.

18 Jackson Walker has pending discovery matters before
19 Judge Rodriguez in a miscellaneous proceeding. The Equity
20 Committee has a pending appeal in denial of their 2004
21 discovery motion. If the Equity Committee prevails on that
22 appeal, it could get remanded back to the Bankruptcy Court.
23 It doesn't make sense to have a different Bankruptcy Court
24 address those issues, given that this Court has already
25 adjudicated the motion.

1 Professionals will need to file final fee
2 applications where the Court will be asked approve fees based
3 on everything that's happened on the last 13 months. There
4 are two pending adversary proceedings.

5 From an efficiency standpoint, no Court is better
6 positioned than this one to oversee those remaining matters.

7 In arguing that a transfer or dismissal would be in
8 the interest of justice, Mr. Culberson, in particular, almost
9 exclusively focuses on the allegations that Scintilla
10 manufactured venue in bad faith.

11 Mr. Culberson goes as far as to suggesting that the
12 Debtors committed bankruptcy fraud in alleging that venue was
13 chosen for the purpose of taking advantage of a relationship
14 between former Judge Jones and Ms. Freeman.

15 These allegations are reckless and defamatory and
16 couldn't be further from the truth. Latham was unaware of
17 that relationship at all times prior to it becoming public in
18 October of 2023.

19 I made that representation under oath in a
20 Declaration previously submitted to the Court at Docket
21 No. 1783. And I reiterate today everything that was said in
22 that Declaration.

23 The Debtors chose this venue for far less remarkable
24 reasons. Like many large, complex corporate Debtors before
25 them, they took the steps to facilitate a filing in the

1 Southern District of Texas because of this Court's deep
2 experience in complex corporate cases, the high power of its
3 judges, and it's well deserved reputation for efficiency and
4 flexibility, which it turns out the Debtors and many other
5 parties, including Mr. Culberson, have benefitted from
6 numerous times over the course of these cases when they
7 requested emergency relief.

8 Dr. Ji testified at his deposition that the Debtors
9 only prepared to file for bankruptcy a few days before the
10 actual filing. That's at page 15.

11 The Debtors' First Day Declaration submitted by
12 Mr. Meghji, Exhibit 4, provides that they were down to less
13 than \$5 million of cash on filing. That's at paragraph 18.

14 It also provides that the Debtors had a creditor
15 with 175 million judgment seeking to exercise remedies. The
16 Debtors filed these cases with no DIP. I don't even think
17 they filed initially with any First Day Motions. But knew
18 they would have to be pulled together quickly and they would
19 need to secure a DIP and have it approved immediately.

20 There is nothing remarkable about the Debtors'
21 choice of venue. Scintilla is not the first company to take
22 corrective steps to be able to access its preferred venue and
23 it likely won't be the last.

24 Some Courts have even suggested that the Debtors
25 have a fiduciary duty to file for bankruptcy in the most

1 favorable jurisdiction. For example, in *Patriot Cole* Judge
2 Chapman said that it could indeed be argued that the Debtors'
3 venue actions were entirely consistent with or even required
4 by the Debtors' fiduciary duties. And that's at 482 B.R. 742.

5 I am fully aware that some people look at those
6 efforts skeptically or critically or find them disfavorable.
7 The Section 1408 is flexible and it permits those measures.

8 To the extent promoting venue shopping is bad
9 policy. Respectfully, that is Congress's determination to
10 make and they haven't made it.

11 THE COURT: What else do you got?

12 (Pause in the proceeding.)

13 MS. RECKLER: Your Honor, very briefly I am done on
14 the venue transfer motion. But Mr. Culberson's motion also
15 seeks reconsideration denial of his discovery motion with
16 respect to Latham.

17 We believe that this should be denied. As I
18 discussed there's no new evidence or fraud, let alone any new
19 evidence. There's no basis for the Court to reconsider that
20 prior ruling.

21 THE COURT: Thank you.

22 MR. SHINDERMAN: Yes, Your Honor. Mark Shinderman
23 on behalf of the Committee. Can you hear me okay, Your Honor?

24 THE COURT: Just fine. Thank you.

25 CLOSING ARGUMENTS

1 MR. SHINDERMAN: Okay, thank you, Your Honor. I
2 have said and raised related points. The first is mention at
3 the opening, the Committee and the Debtor did not want to
4 waste time and money on this particular fight, they made three
5 offers.

6 They would also fight late transfer venue we can do
7 it later. We (indiscernible). It was rejected.

8 Similarly the Debtor and the Committee made an offer
9 to stipulate to all the relevant facts you heard today in
10 order to streamline this process. That was rejected.

11 The consequence was, as we told the Trustee's
12 Office, we needed to fight this issue, which leads to my
13 second point. As I said on the outset, we don't fear changing
14 venues. Change venues will not change any of the orders
15 (indiscernible) this far.

16 It would not change the comments that all the money
17 invested by Equity and significant liabilities prior to the
18 commencement of this case.

19 It will not change the creditors must
20 (indiscernible) before equity can get any recovery. In short,
21 transferring venue doesn't change what is happening today.

22 Brings me to the third point. Transferring venue
23 would be inefficient. We have a pending motion regarding the
24 trading and (indiscernible) period.

25 That (indiscernible) period expires at the end of

1 this month. If we don't get relief on that motion by the end
2 of this month, then claims of (indiscernible) equity would be
3 free to trade. This would hurt our ability to bring value
4 back into the lawsuit as we (indiscernible) estate as we
5 claimed in prior motions. There would be real harm.

6 You heard on Friday from the Equity Committee that
7 we are working hand in glove to try to figure out how to
8 monetize the NOL. That may require a Plan negotiation. The
9 Plan, does not, of course, is not complex. We spent some time
10 with it.

11 Third, the testimony delay the sale. The sale will
12 hopefully close according to schedule and on time, no
13 problems. But if not, we need the Court to enforce it because
14 of our liquidity constraints, need someone who is already up-
15 to-speed and familiar to step in help the parties resolve
16 issues, if there are any.

17 And lastly we also have the action pending before
18 Judge Rodriguez which involves DIP and a number of other
19 cases. If we move the venue to another Court, would only
20 invite more, not less costs.

21 During testimony in this case is complex, unusual
22 (indiscernible) operations. Once a summary statement, Judge,
23 Mr. Meghji explained under penalty of perjury that giving that
24 you had assets that was not fully developed, was not in the
25 marketplace. Funding for the sale became very difficult.

1 Transferring to another venue will take time to
2 bring another Judge up-to-speed. We're not saying that
3 another judge couldn't do this. Of course another Judge
4 could. But when we get on calendar timely? Would he
5 understand the context? Would we have to spend a lot more
6 money educating him? That's the problem.

7 (Indiscernible), which is a simple one. In short
8 there's no benefit in changing venue only harm. So that makes
9 (indiscernible), let's turn to the statute.

10 The U.S. Trustee essentially argues that if the
11 jurisdiction isn't proper, you must, absolutely must, shall
12 transfer venue. As the Debtor points out, Debtor does not
13 believe that venue is improper for first instance.

14 I looked at the evidence just like you did and I was
15 struck by Trustee's Exhibit No. 6 where it says that the money
16 was transferred to the branch, Signature branch in Houston. I
17 think that's very important. That's from U.S. Trustee Exhibit
18 No. 6.

19 (Indiscernible) seem like our brief, the Committee's
20 brief, the statutes do say and what they don't say.

21 28 USC 1406 doesn't stop the 1406(a). 1406(a) does,
22 as the U.S. Trustees say, that if anything is improper
23 transfer is either you must transfer or dismiss. 1406(c) then
24 imposes entirely (indiscernible 3.31.34).

25 So it can't be read in a vacuum. It says any motion

1 must be timely. And we spent a lot of time talking about
2 whether or not timeliness means relative to discovery of the
3 issue. But that's not what the case law talks about.

4 The case law talks about timeliness within
5 constraints of the development of the case. So absent the
6 administrator as the Court was brought up-to-speed has
7 testimony solicited, have pleadings been filed.

8 There's substantial case law that talks of
9 timeliness in terms of administration of the estate, not just
10 relative to the discovery. And that, that is really most
11 important.

12 It's the Trustee's position that this case was fully
13 administered and the only thing we had left to do was approve
14 or not approve or question final fee applications, then you
15 must transfer. But clearly all these dozens of cases talk
16 about the estate being fully administered or partially
17 administered or the Court is up-to-speed on important stuff.

18 Formulating opinions on the veracity of witnesses
19 and positions of the parties. That's what timeliness means.
20 All those cases will be rendered meaningless in the Trustee's
21 view that shall of 1406(a) should be read in a vacuum.

22 You can't simply read 1406(b) timeliness of the
23 statute, which leads us to 1412, 28 USC, and Bankruptcy
24 Rule 1014. They actually speak to the interest of justice.
25 And really important to note, especially from the Trustee's

1 argument, 1014(a) talks of cases that are improperly filed.
2 In 1014(b) seeking cases that properly filed. They have the
3 same text.

4 If venue must be transferred, if it was improper in
5 the first instance, you wouldn't have the same test in (a) and
6 (b), which is discretionary based on the interest of justice
7 intervenes with the parties.

8 So the Trustee's position was not only raised 28 USC
9 1406(b) out of (indiscernible) but also (indiscernible) the
10 rules to render (indiscernible). And that's very, very
11 important and not in evidence, which brings me to my sixth
12 point.

13 In the closing argument the Government, the U.S.
14 Trustee and Mr. Culberson talks about the precedential effect
15 on this case. And talks about whether or not the test is
16 really headquarters, the principal place of business, or where
17 your assets are located.

18 I don't see Congress every couple of years takes up
19 legislation about change of venue statutes. It's a fair
20 question and there are no venue issues in (indiscernible).

21 And those don't rely just on headquarter questions,
22 they go to complex case proceedings. The Ninth Circuit, for
23 example, rejects the idea of the complex case procedures.
24 Texas does not. Other courts have adopted those.

25 When we talk about venue in terms of foreign

1 (indiscernible). Every few years Congress takes up question
2 whether or not we should change the rules that's been in place
3 for 20 years. And thus far has rejected it. Okay?

4 Congress is supposed to make precedent, not the
5 Courts, Your Honor.

6 Does Your Honor have questions?

7 THE COURT: No, I just wanted to get to the seven if
8 you've got one.

9 MR. SHINDERMAN: I'm sorry?

10 THE COURT: That was your sixth point. I wanted to
11 know if you had a seventh. That's where I was going.

12 MR. SHINDERMAN: Yes, I do, Your Honor. I have a
13 seventh point and I'll get to it right now.

14 If the Court finds that it must transfer venue that
15 it's not discretionary, we urge a delay of about one month
16 until two things are resolved. Until the sale is closed that
17 necessarily involves the NOL question, when Your Honor hears
18 the pending motion regarding the trading restriction because
19 again, it could cause great harm to the estate if we can't get
20 timely hearing in another Court on that question.

21 So if the Court believes that you must transfer
22 venue, then in that case we ask that as Judge Therber
23 (phonetic) did with a one-month delay.

24 Thank you, Your Honor. I have nothing further.

25 THE COURT: Thank you very much.

1 I'll hear from the Equity Committee.

2 CLOSING ARGUMENTS

3 BY MS. LOVRIC: Thank you, Your Honor. Just
4 briefly. And again for the Record, Margaret Lovric, Glenn
5 Agre Bergman & Fuentes, on behalf of the Equity Committee.

6 Your Honor, the Equity Committee is supportive of
7 the U.S. Trustee's motion to transfer venue in the estate. We
8 understand the Court's concerns with respect to the timing of
9 the motion. But we also believe concerns articulated by the
10 US Trustee are real and valid and (indiscernible) due process.

11 It appears that the price of venue in this District
12 was liking at the very beginning of the case. And accordingly
13 we believe that the relief requested in the U.S. Trustee's
14 motion is appropriate and should be granted.

15 THE COURT: Thank you.

16 MS. LOVRIC: Just one --

17 THE COURT: Sorry, I apologize.

18 MS. LOVRIC: Oh, sorry. Just a few quick points,
19 Your Honor. I definitely want to say Mr. Meghji referenced
20 the Equity Committee is continuing to pursue a deal to modify
21 the Debtors' NOLs.

22 Just to be very clear, the Equity Committee will
23 continue to work to modify the NOLs regardless of which
24 District it proceeds in. And we will work with the other
25 professionals to try to prevent any such transaction to

1 whichever Court receives this case going forward.

2 Do not believe that the mere potential of a future
3 deal to modify the NOL is relevant to whether or not you
4 should transfer it.

5 Similarly, Mr. Meghji was asked about what can
6 conceivably happen in the future with respect to the Equity
7 Committee's pending appeal on the Rule 2004 motion. Again,
8 speculation could happen in connection on that appeal has no
9 bearing on whether or not venue is proper today.

10 And for those reasons, Your Honor, we'd ask the
11 Court grant relief requested by the United States Trustee.

12 THE COURT: Thank you.

13 Is there anyone who has not spoken who filed either
14 in support of the relief or against the relief requested?

15 (No audible response.)

16 THE COURT: Okay. I want to think about a few
17 things. Why don't I -- it's 3:37. Why don't we come back on
18 in 10 minutes? Thank you.

19 (Recess taken from 3:38 p.m. to 3:48 p.m.)

20 THE COURT: This is Judge Lopez. It's March 11,
21 about 3:50, I am still here in connection with the Sorrento
22 hearing. There may be some folks who are here in connection
23 with what was a 3:00 o'clock, which then got pushed to 4:00.
24 I will take that matter up.

25 The line has been

26 completely muted. You're more than welcome to stay. After I
27 rule, we're probably going to get -- realistically start that
28 hearing around 4:15, but just in case somebody's dialing in
29 and trying to figure out what's going on, no, I have not
30 started the *Free Speech* matter. We'll get started with that
31 around 4:15, if that's okay. So I thank everyone for that.

32 Okay. Let me get started. I thank the parties for
33 their presentation today, the arguments that are presented to
34 the Court.

35 I think everything was incredibly important. Every
36 document that has been admitted into evidence. I've been
37 listening to the arguments and also kind of walking through
38 the documents that were admitted into evidence.

39 And there was some depositions transcripts which I
40 read as well in between matters, but I took the time and I
41 feel comfortable -- I mean, I'm prepared to rule now on all
42 matters.

43 So before the Court is consideration of a motion to
44 dismiss these cases, or to transfer them to another District.
45 The Court has jurisdiction over this matter and this is a core
46 proceeding under 28 USC 157(b).

47 The motions were filed by Timothy Culberson, an
48 attorney who appears today in his capacity pro se. He's also
49 an equity holder of Sorrento, and also the office of the
50 United States Trustee. The Debtors and the Official Committee

1 of Unsecured Creditors opposed the motion.

2 The Official Committee of Equity Holders has
3 expressed statement in support of the motion.

4 I'm going to provide some background, a little long,
5 but I'm going to ask that everyone -- I think it's important
6 to have a good Record.

7 These cases were filed on February 13, 2023, in the
8 Southern District of Texas. February 28th, the U.S. Trustee
9 appointed an Official Committee of Unsecured Creditors, which
10 has been reconstituted several times.

11 I believe on March 28th, June 7th, and July 28th.
12 On April 10th, the U.S. Trustee appointed an Official
13 Committee of Equity Security Holders, which was again
14 reconstituted, I believe, on April 14th.

15 Both Official Committees have been active in these
16 Chapter 11 cases. There have been numerous financing orders
17 that have been entered in this case by prior bankruptcy judge.
18 I became affiliated with this case in early October, so from
19 February to I'd say early October or mid-October, it was
20 another bankruptcy judge, and I became in middle to late
21 October.

22 In March of 2023, the Bankruptcy Court entered an
23 Order approving for example \$75 million post-Petition. I see
24 as facility on a financing, final basis. There was another
25 one in July of 2023. In August of 2023, there was a

1 replacement post-Petition senior financing facility.

2 In August of 2023, after negotiations between a
3 replacement lender and the Debtors, the parties later agreed
4 that the Debtor would sell certain stock which the bankruptcy
5 court approved in September of 2023.

6 This Court recently, after another DIP last Friday,
7 to get to a sale. This last order is not used to support the
8 Court's ruling today. That was upon agreement of the parties
9 last Friday, as part of the ruling and the history.

10 The Debtors also sold and marketed plenty of assets,
11 too. This Court recently approved the sale last Friday with
12 the support of many parties. Again, not used to support any
13 Court ruling today, but it is part of the Record and history
14 of this case.

15 The Chapter 11 case has also been confirmed in this
16 case. The Chapter 11 Plan, I should say, has also been
17 confirmed in connection with this case. In October of 2023,
18 I, this -- the judge on that case, entered an order
19 conditionally approving the Disclosure Statement, setting a
20 hearing to consider confirmation of the Chapter 11 plan of
21 liquidation.

22 Loads of unsecured creditors were solicited in
23 connection the Plan Confirmation. The Plan was overwhelmingly
24 adopted by the solo class, which was the class of general
25 unsecured creditors, with over 96 percent of voting creditors

1 in number, over 94 percent of voting claims accepting the
2 Plan.

3 I confirm that Plan. It satisfied the Bankruptcy
4 Code's requirements. It's now a Final Order. It contains no
5 third party releases, doesn't exculpate anyone. Entering an
6 order again last Friday, which modified the Plan, provides
7 that equity won't be canceled on the effective date.

8 But the holders can trade their shares if they want,
9 giving some additional flexibility, and if somehow unsecured
10 creditors get paid in full, shareholders would stand to gain
11 any excess.

12 I said before, and I'll say it again, I said it last
13 Friday, I know the Equity Committee is working hard to see if
14 that is a possibility based on certain deals. Movants seek
15 relief under 28 USC 14 (indiscernible) to 1406, and Bankruptcy
16 Rule 1014.

17 So let's start with Section 1408. Section 1408
18 provides a case under Title 11 may be started in District
19 Court, the District in which the domicile resident's principal
20 place of business in the United States, or principal assets in
21 the United States for the entity, and subject to that case,
22 where it had been located or the 180-days immediately
23 proceeding the commencement (indiscernible) longer, under any
24 period, and they were located in any other District.

25 1408 doesn't say who may challenge venue in a

1 bankruptcy case, or the process by which it may be challenged.
2 The answer to those questions are found in the Federal Rules
3 of Bankruptcy Procedure.

4 Bankruptcy Rule 1014 sets out the procedure for when
5 a case is properly filed in the District, and when a case is
6 not properly filed in the District. Bankruptcy Rule 1014(a)
7 deals with situations where the Petition was properly filed to
8 transfer the case to another District.

9 1014(a) says the Court, on a timely motion of a
10 party-in-interest or on its own, may transfer the case to
11 another District if the Court determines that the transfer is
12 in the interest of justice or for the convenience of the
13 parties.

14 1014(b) deals with the cases that are filed in an
15 improper District. It says that the Court, on a timely motion
16 of a party-in-interest may dismiss the case or transfer it to
17 another District if the Court determines that the transfer is
18 in the interest of justice or the convenience of the parties.

19 The difference between subsection (a), and
20 subsection (b) is that (b) has the potential for a dismissal
21 if the case was filed in the wrong District. But both, I'd
22 say, Bankruptcy Rules 1014 standard is consistent with what's
23 found under 28 USC 1412, which says that a District Court may
24 transfer a case or a proceeding to a District Court, or
25 another District in the interest of justice or for the

1 convenience of the parties.

2 You still see that interest of justice, convenience
3 of the parties by which they are. Movant's argue that the
4 venue was never proper in the Southern District of Texas, they
5 point to evidence that before the filing, attorneys for the
6 Debtor opened up a PO Box that was used as the principle place
7 of business for the Debtor.

8 The Petition also, several days before the filing,
9 the Debtor transferred \$60,000, to a bank in Houston, that
10 would be used to justify the principal assets problem in
11 Section 1408.

12 Debtors don't dispute that this opening of the
13 PO Box or the transfer of the funds -- they just counter the
14 first file Debtor, Scintilla was used to establish venue in
15 the District. It was not operative and there was nothing
16 improper about what it did.

17 I've said before, and I'll say it again, I said it
18 about a week or so ago, I previously ruled that the acts,
19 those acts of opening up the PO Box and transferring the fund,
20 they didn't amount to fraud or warrant sanctions.

21 The PO Box was listed in the Bankruptcy Petition,
22 and it does say PO Box. The bank account was listed in public
23 filings. I've also said before and I'll say it again, I think
24 the actions taken by the Debtor in opening up the PO Box and
25 transferring the funds were certainly not new or unique to

1 this District.

2 It's not rampant. You know, there was some
3 discussion -- I'm also aligned with bankruptcy judges across
4 the country that disfavor these types of legal maneuvers to
5 establish venue in a District.

6 But let's start with the legal analysis.
7 Interpreting the Bankruptcy Code and the rules begin with
8 analyzing the text. I've cited too often, *Whitlock versus*
9 *Lowe*, 945 F3d 943, 947, Fifth Circuit 2019, the matters of
10 statutory interpretation text is always the alpha.

11 Bankruptcy Rule 1014(a) and 14(b) reading regardless
12 of whether the Petition was filed or not filed in the right
13 District requires that a motion to be brought must be timely.

14 The rules specify what constitute a timely
15 objection, but one can look to the advisory committee notes.
16 I think they're really helpful here. But before I do that, I
17 think I would note it's very consistent.

18 I mean, I think textural analysis, we can also
19 determine what timely means just by understanding its common,
20 everyday use of the term. When you look at the definition of
21 timely just using a Merriam Webster Dictionary, appropriate or
22 adapted to the times for the occasion, right.

23 That's what timeliness means. If you look to the
24 Advisory Committee rules and they're consistent, and that's
25 why I find it helpful. I want to be really clear about that.

1 I think the Advisory Committee rules are consistent with that
2 understanding of what it means to be timely.

3 The Committee notes subdivision (a) protects the
4 parties, and I'm quoting, "The parties against being subjected
5 to a transfer except upon a timely motion of a party-in-
6 interest. If the transfer would result in fragmentation or
7 duplication of administration, increase expense or delay
8 closing the estate, such a factor would bear on the timeliness
9 of the motion, as well as the propriety of the transfer under
10 the standards prescribed under subdivision (a)."

11 1987, the Committee advisory notes that if a timely
12 motion to dismiss for improper venue is not filed, the right
13 to object to venue is waived. I think that's consistent with
14 what the plain textural definition of what timely means.

15 Fifth Circuit Court of Appeals has also held that
16 venue is a privilege, personal and even when venue is laid in
17 a court what would otherwise be improper, it may be waived by
18 the express agreement or conduct, *Hunt versus Bankers Trust*
19 *Company*, 799 F2d 1060, cite 1068, Fifth Circuit, 1986.

20 Failure to object to venue in a timely manner
21 results in waiver in the objection to venue, and there are
22 cases across the country that cite that. I'll cite to a few,
23 but there are a lot of them.

24 *Bryan versus Land*, 215 BR 398, Eighth Circuit, 1997.
25 *In Re: Moss*, 249 BR 200, Bankruptcy Western District of

1 Missouri, 2000. You know, that's the first test. If the
2 motion's not timely, filed by either party, then 1014 says,
3 you don't consider anything else.

4 Here, I find that both motions are not timely, and
5 that the argument for venue has been waived for a number of
6 reasons. First, this case has been pending in this Court,
7 this jurisdiction for over a year. If nothing had happened
8 substantively within the year, like if it was a dormant case,
9 nothing much had happened during that time, maybe I'd consider
10 things a little different, or weigh it differently.

11 I recounted earlier just the hint of all that's
12 happened in one year. I didn't even get into the nine months
13 of mediation with the Debtors and two Official Committees
14 before another bankruptcy judge in this District, out of which
15 came a major settlement with the Nant parties which a
16 settlement would be on Nant parties.

17 I'd also note that on February 13th, and this was in
18 evidence that the Debtor, Scintilla filed this Petition,
19 listing its PO Box as his principle place of business.
20 Scintilla also listed Sorrento's San Diego address, the 4955
21 Director's Place as its mailing address.

22 May 25, 2023, Scintilla filed Schedules and Assets
23 and Liabilities showing that it's only asset was \$60,000 of
24 cash in the bank account. Well, it was 60,000 cash in bank
25 account.

1 On May 30th, the U.S. Trustee conducted a
2 Section 341 Meeting of creditors which counsel to a creditor
3 which was the main parties that came out, asked various
4 questions about Scintilla and its venue, including questions
5 about the PO Box, the bank account, books and records and
6 place of incorporation.

7 And the Creditors Committee noted that they had
8 looked into it, and elected not to pursue it. We also had an
9 active Equity Committee at the time. Remember, the Equity
10 Committee was appointed before the 341 Meeting.

11 I said this before, too, and I'll say it again, I'm
12 not here to fault anyone, including the U.S. Trustee. I know
13 who conducted that exam, and I'm going to say this, that
14 there's not a better United States Trustee, in my opinion, and
15 the individual who conducted by exam, someone's who conducted,
16 who has dedicated over 20 years, at least 20 years of public
17 service.

18 I'm not here to claim Monday morning quarterback,
19 but I don't think the office of the United States Trustee at
20 the same time can claim Monday morning revision. Certainly on
21 an opportunity ask questions.

22 But if anyone reads anything that I'm saying today
23 as looking, or questioning the integrity for anything about
24 that United States Trustee, you could not be any more wrong
25 about how I feel about the work that that individual does, the

1 work that the Houston office in the Southern District of
2 Texas, the office of the United States Trustee does, it means
3 something new for me.

4 I've defended their work publicly on several
5 occasions, and I'm not going to get into the cases, but they
6 know it. I don't think they can play Monday morning
7 quarterback either.

8 I'd also note as has been noted, Mr. Culberson has
9 been incredibly active in this case. But in August of 2023,
10 he certainly filed a motion to appear pro hac. The Debtors
11 plan was confirmed in December of 2023. It's a Final Order.

12 In April of 2023, I'd note -- well, we can stress,
13 they recently discovered the information. But the information
14 was available since the beginning of the case. Indeed, they
15 were questioned about it at the 341 Meeting of Creditors. But
16 provided follow up information about bank accounts was readily
17 available.

18 I think the advisory -- I think the plain text,
19 plain meaning definition of what it is to be timely and the
20 Advisory Committee's consistent guidance on timeliness
21 considers the stage of the case, the location of evidence,
22 administration of justice.

23 Why I was asking the question about where it should
24 go, and where you send it, because that's what the rule --
25 that's what you got to consider when something is timely.

1 I've said this before, too, if the issue was raised, as it
2 often is, at or near the beginning of the case and it was
3 timely, I think I'd think differently.

4 That's not the case here. It's a confirmed
5 Chapter 11 Plan that's been voted on by creditors holding tens
6 of millions of dollars of claim. None have received payment
7 yet. And there are also pending several multi-million sales
8 that are pending.

9 I also note the Bankruptcy Court has entered over --
10 I found, not counting the ones that I said I wouldn't count.
11 There are over 60 Orders by Bankruptcy Courts finding that
12 venue was proper.

13 You're going to be entitled *res judicata* effect,
14 including Plan Confirmation, including the conditional
15 approval of Disclosure Statement, including final approval of
16 Disclosure Statement, including confirming a Chapter 11 plan.
17 Don't ever question it. Those findings are entitled to *res*
18 *judicata*.

19 Duplication of efforts is big here. You'd going to
20 have to be able to deal with -- I don't -- this case was first
21 transferred from one judge to me, another judge.

22 To get up-to-speed, it took me at least 40 hours of
23 dedicated, listening to hearings, reviewing pleadings and
24 orders and studying the law. It had to be done quickly, and
25 there were a lot of moving pieces going on in connection with

1 this case, and there continue to be a number of moving pieces.

2 But I did it, mostly between 9:00 p.m. and 2:00 a.m.
3 in the morning. It's not a simple task to get up-to-speed.
4 So that's -- do I have any doubt of the ability of my
5 colleagues? No.

6 They're the Southern District of Texas
7 (indiscernible) are out there, or my colleagues in Delaware.
8 No, the duplication of effort, that's real, and I know what it
9 takes because I had to do it.

10 This case was transferred in October of 2023 to me.
11 It's incredibly complicated, confirmed plan. And appeal over
12 Rule 2004 denial pending in this District Court.
13 Miscellaneous proceeding about professionals fees that are
14 underway, right?

15 I may not consider that in connection with whether
16 something is timely in light of the guidance from the Advisory
17 Committee rules and guiding what timely means, right. I'm
18 being asked to consider, that's not timely a post -- a case, a
19 post-confirmation modified -- why don't we just call it a
20 post-confirmation case in which there are pending sales, in
21 which an Equity Committee kind of raised, you know, deals and
22 multiple pieces of who's the absolute best judge to be able to
23 deal with that? Me. No one is up-to-speed on this. The only
24 one in the country that's up-to-speed right now as to what's
25 going on and can deal with something if somebody filed an

1 emergency motion tomorrow.

2 Do I have any doubts that my colleagues are up to
3 the task, or smart enough to do it, there's no question about
4 that. I don't ever question that. The question is
5 duplication of effort, administration of justice.

6 Is it timely, has venue been waived by those parties
7 who sat there and knew? Of course. To me, this ends the
8 analysis, and that's what the rules say to do. The motion's
9 not timely, the venue has been waived by both parties,
10 Mr. Culberson and the Government.

11 I understand the Government's concern, but the
12 Government is not going to be held to any higher standard, or
13 lower standard by which it must -- it's a litigant, it's
14 treated just as a party-in-interest, and be treated like every
15 other party-in-interest.

16 And if they had information, then pursue it. That's
17 where we are.

18 Let's proceed a little bit further. To me, that
19 ends the analysis. The only question is, and you know, should
20 I proceed on the 1014(a) or 1014(b)? The only answer is under
21 either one, the analysis is over. It's not timely. And based
22 upon the evidence presented to me, and based upon the shifting
23 burdens in this case, you know, what do I have in this case?
24 What evidence has been presented into the Record? A wiring
25 instruction for \$60,000 that has been placed in a Signature

1 Bank account that's listing a Houston branch location.

2 And I have an auditor who's just as honest as can
3 be, who said I've been doing Google searches for about a week
4 and a half, and I found a couple of things on Google and
5 overcome the evidence that's into the record.

6 I have in evidence, a \$60,000 bank account, a PO Box
7 that's listed and no one's questioning. I think venue is
8 proper under 1014 based on the facts. Based upon the evidence
9 that's been presented to me.

10 And again parties are questioning good faith. Those
11 are 1112 motions. I don't think that'd be timely either. Let
12 me just note, right, that's when you get into other line of
13 cases.

14 So our parties, I think Mr. Culberson may be one of
15 the parties, just rendered. No, there are other sections of
16 the Code that are here to deal with good faith and what you do
17 there. It's not before me at this stage of the case.

18 Again, they are (indiscernible) to convince me at
19 this point based upon the actions that have been taken in
20 connection with this case. And I also quite frankly defend
21 the orders that have been entered in connection with this
22 case.

23 I've reviewed every one of them. I've asked out
24 loud, are there any orders where people have found that are
25 questionable. Not one, not one person has questioned one in

1 open court. I take that for what it's worth.

2 I do note Section 1408 contemplates principal
3 assets. I know that principal assets can be located in more
4 than one District, and I rely on cases like *In Re: MidAtlantic*
5 *Retail Group*, 2008 Westlaw 61287, Bankruptcy Middle District
6 of North Carolina case, January 4, 2008, (indiscernible)
7 relied on in connection with (indiscernible) analysis there.

8 The venue statute doesn't require that the only
9 principal asset may support, but here the only principal asset
10 is located, based upon the evidence in front of me, in
11 Houston.

12 The question is whether these cases should be
13 transferred to another District is quite frankly up to the
14 Court's discretion. *In Re: Commonwealth*, 596 F2d 239, 247,
15 Fifth Circuit, 1979. And whether this Court should exercise
16 its discretion based on the convenience of the parties and the
17 interest of justice, I would note I heard zero testimony about
18 which (indiscernible). I heard zero evidence about which
19 court, which District would be more convenient for the
20 convenience of the parties or interest of justice.

21 It's like, Judge, you pick, right? Southern
22 District, Delaware, just get it out of here, not a shred of
23 evidence as to which Court would be more convenient or in the
24 interest of justice. Just you pick it, Judge.

25 The Committee argued something a little different,

1 saying, "Judge, if you got to pick one, we would ask that you
2 send it to Delaware." I'll do my own analysis. The proximity
3 of the Creditors to (indiscernible) of the court, proximity of
4 the Debtor to the Court, these are Commonwealth refinancing
5 standards.

6 Proximity of witnesses, location of assets, the
7 economic administration of the estate, the necessity, excuse
8 me, for ancillary administration. Again, I didn't hear any
9 evidence on that, and I'm not sure -- to me, that stops the
10 analysis right there, you know.

11 Telling me to just transfer it, and I get to pick.
12 I don't think that's the analysis, but I'll proceed a little
13 bit further. And I asked questions about what courts could
14 do, and I got it.

15 I would note the U.S. Trustee is with the most
16 knowledge of this case and the moving pieces are located in
17 this building. The (indiscernible) restructuring is based in
18 New York. These lawyers are based in other cities.

19 The Equity Committee's lawyers based in Missouri,
20 and they've all -- the Debtors, UCC and the Equity Committee
21 have all retained local lawyers in Houston. Mr. Culberson,
22 the Movant, is located in Texas.

23 No evidence in the Record that proximity of
24 witnesses favors any District. The only evidence about
25 economic administration of the estate, the only argument quite

1 frankly, was presented by -- meaningful argument was presented
2 by the Official Committee of Unsecured Creditors.

3 I'm saying there are a lot of moving pieces. The
4 interest of justice mandates that it stays here, too. And
5 again, I'm only using this if the case were going to 1014(a),
6 if somehow I rule on timeliness, which I'm not.

7 And I'll go a little step further. Interest of
8 justice mandates that it stays here. Again, the case was
9 confirmed by the overwhelming majority of Creditors. The case
10 was already transferred to a new judge, that being me in
11 October of 2023.

12 The interest of justice is to a judge with the most
13 knowledge, where it's already been transferred, one, and not
14 send it somewhere to be transferred again. And again, with no
15 knowledge as to where it should send it, just me, pick me,
16 right?

17 And I don't think that's the way the rules should
18 work, and I don't think I should just do it that way without
19 any analysis. But I think I'm the one with the most knowledge
20 who could deal with these complicated matters in a timely
21 manner, I will say that.

22 No question about that. In fact, it's
23 (indiscernible). So I think the reason timeliness and waiver
24 makes sense in the rule is that you don't have to consider
25 transferring and the consequences of transferring or

1 dismissing until you deal with something being timely.

2 In other words, things can be so far along, right,
3 that it just makes sense to allow it to complete the work as
4 to where it is. And I am not here -- there's been a lot of
5 talk about rules and what's there for Congress to do.

6 I don't get into the work of the legislature, but I
7 do know I'm here to enforce the rules as written, applying the
8 most strict textual analysis that I know how, and then I know
9 what to do.

10 So for the reasons I've stated, I'm going to
11 overrule the objections, I should say the motions. I'm going
12 to deny the motions. I should just be really clear. I
13 shouldn't overrule their motion. I should just deny their
14 motions.

15 Mr. Culberson, the U.S. Trustee's motion is denied
16 as untimely under Bankruptcy Rule 1014, and waived based upon
17 binding of applicable Fifth Circuit case law. You know,
18 that's the analysis. And to the extent -- I'll just leave it
19 there.

20 I should also address one last point, and that has
21 to do with the motion for reconsideration filed by
22 Mr. Culberson. Did a motion for -- did request
23 reconsideration of a prior court ruling.

24 I would note Mr. Culberson did not -- I don't
25 believe identified the rule, the applicable ruling that he

1 sought reconsideration under, so I'll just say this. Rule of
2 Civil Procedure 60 applies to bankruptcy cases to Federal Rule
3 of Bankruptcy Procedure 9024.

4 Rule 60(b) provides that on a motion and just terms,
5 the Court may relieve a party or its legal representative from
6 a final judgment order or a proceeding for the following
7 reasons: mistake, inadvertence, surprise or excusable neglect.

8 This is on the (indiscernible), but that was one.
9 Two is newly discovered evidence that with reasonable
10 diligence could not have been discovered in time to move for a
11 new trial under Rule 59(b).

12 Three, fraud, misrepresentation or misconduct by an
13 opposing party, that's three. Or six, any other reason that
14 justifies relief. Rule 60(b)(6) is a general catchall phrase
15 and it is reserved for extraordinary circumstances, *Buck V*
16 *Davis*, 580 US 100, 10.123, 2017, United States Supreme Court
17 case.

18 I'd note *U.S. V Stephens*, 731 F3rd 370, pinpoint
19 cite, 374, Fifth Circuit, 2013 case has the same United States
20 Supreme Court has held, that it provides courts with
21 adequate -- authority adequate to enable them to vacate
22 judgments whenever such action is necessary to accomplish
23 justice.

24 I'd also caution it should be applied in
25 extraordinary circumstances, right? Those are the Health

1 Services Acquisition Corp, 486 US 847, pin cite 864, 1988, and
2 *Liljeberg versus Health Services Acquisition* -- and let me
3 just say -- excuse me.

4 In *Yesh Music versus Lakewood Church*, 727 F3rd 356,
5 Fifth Circuit case out of 2013, held that 60(b)(6) requires a
6 showing of manifested justice, and will not be used to reveal
7 party from the free calculated deliberate choices is made.
8 The Court has heard no evidence presented to mistake or any
9 other 60(b)(6).

10 I haven't heard any evidence presented to the Court
11 on mistake, inadvertence, surprise or excusable neglect, any
12 newly discovered evidence. I think I've already ruled on
13 there's been no fraud or misrepresentation or conduct.

14 I think the evidence shows the opposite, or for any
15 other reasons under 60(b)(6). And I'd note there's been no
16 other showings, I mean other 60(b) factors that would play. I
17 haven't heard any evidence that was presented to me. I'd also
18 note that today Rule 7059 came into effect.

19 I haven't heard any evidence that would justify
20 relief under Rule 7059.

21 So therefore, that is my ruling. I'll enter a short
22 order saying that for the reasons stated on the Record, I am
23 denying both motions under two separate orders. I believe
24 that's the appropriate way to do it.

25 There were two separate motions. I'm considering

1 them at the same time. I thank the parties for their time.
2 I'll get you a short order, in short form.

3 And for the parties who showed up the 4:00, I mean
4 once 3:00, now 4:00, if you can just give me 10 minutes, so I
5 can just gather some docs. And we'll start with *Free Speech*
6 *Systems* at 4:35. Thank you.

7 (Proceeding concluded at 4:24 p.m.)

8 * * * * *

9 *I certify that the foregoing is a correct transcript*
10 *to the best of my ability produced from the electronic sound*
11 *recording of the proceedings in the above-entitled matter.*

12 /S./ MARY D. HENRY

13 CERTIFIED BY THE AMERICAN ASSOCIATION OF
14 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
15 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
16 JTT TRANSCRIPT #68376
17 DATE FILED: MARCH 17, 2024